



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 45, 46 and 67 for unpaid rent and damages to the property;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) For a return of twice the security and pet damage deposits pursuant to section 38 and compensation for breaches of the lease by the landlord and moving costs and fees; and;
- e) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant owes rent and is responsible for costs of rekeying the property? If so, what is the amount of the compensation and is the landlord entitled to recover filing fees also?

Has the tenant proved on the balance of probabilities that they are entitled to twice the security and pet damage deposits refunded and to other compensation for breaches of the lease and/or the Act and to recover filing fees for the application?

Background and Evidence:

Both parties and a neighbour witness attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced June 9, 2014 on a fixed term lease to expire May 30, 2015, that rent was \$975 a month and a security deposit of \$487.50 and a pet damage deposit of \$100 were paid. It is undisputed that the tenant did not pay rent for March 2015 and the landlord changed the locks and repossessed the unit on March 8, 2015. He re-rented the property commencing April 8, 2015. He said the tenants gave him late Notice to End their tenancy on March 1, 2015, then they did not move out and refused to pay rent for March. He said a neighbour told him they saw a moving truck there on March 7, 2015 and he found the home unlocked and abandoned when he went there on March 8, 2015 so he changed the locks and repossessed the home on March 9, 2015. The landlord claims \$975 unpaid rent for March 2015, \$227.50 for April 1-7, 2015 and \$60 for rekeying the home as the tenants did not return the keys. He described the home as an older, character type home.

The tenants said they verbally rescinded their Notice to End Tenancy and did not intend to vacate the home. They said they got a Notice to End their tenancy on March 2, 2015; they said it was illegal as it was not dated and signed. They said they tried to move because of this eviction notice within the 10 days and on March 8, 2015, they got most of their belongings to a new place. They said the landlord broke into their home on March 8, 2015 and the neighbours told them he was in the house. They called the Police for a lot of lawn care items were in the shed, including their lawnmower and weed whacker. They said the Police were proceeding with their charge of theft but they were able to retrieve the items from the landlord after about a month. The tenants claim as follows:

- i. \$246.39 for substitute counter space as the butcher block counter was too mouldy to use. The landlord said he refinished and oiled the butcher block and suggested they clean the counter with bleach; he said there was natural discolouration but not mould. The tenants said he made a mess in sanding it and it was not refinished properly so they bought a kitchen island to use instead and took it with them.
- ii. \$220.00 for a replacement washing machine as nothing was done after several months of complaint to the landlord. The landlord said the washing machine was not broken, it was squeaky and is currently being used by the present tenant as the tenants took their replacement washer with them. The tenants said the noise was unbearable, you could hear it outside. They agreed they took their washer with them.
- iii. \$434.13 and \$106.41 for a stolen lawnmower and weedwhacker –which they are no longer claiming as these items were returned.

- iv. \$975 for double their security deposit and \$200 for double their pet damage deposit.
- v. \$387.66 for moving costs
- vi. \$80.30 for prints for evidence and postal costs
- vii. \$365.64 for 3 months with a broken washer
- viii. \$731.28 for 6 months with mould on kitchen counter
- ix. \$121.88 for 1 month of roof leak over living room. The landlord said there was no actual leak of any water into the living space and he was planning to repair the roof when the weather improved; he said there was never a drop of water in the living area of the home but a small stain on the ceiling only. The male tenant said he went into the attic after observing shingles blowing off the roof; he found some water dripping and put a tarp to divert the water so none actually entered their living space but there were stains on the ceiling so they moved their furniture in case some water came through. The female tenant said they found water in their living room on January 28, 2015. A photo of the ceiling stains and damaged shingles on the roof are in evidence.
- x. \$1131.31 for nearly 6 months with broken window panes in 3 separate rooms. They said there were 3 broken windows when they moved in but the landlord said he would fix them and did not. They said there are heavy winds in their area. The windows were replaced in November or December. The landlord said there were small cracks as pointed out in the photograph of the tenant, the cracks were there for about 20 years and did not pose a problem in his estimation. However, he got an email from the tenant that one window had shattered so he immediately replaced it and the others. The tenants agreed he fixed them a few days after notification that one had blown in and they sent a voice mail that they would repair and deduct the cost from rent if the landlord did not respond. They said wind blew through the cracks and one hole about the size of a be be and it was uncomfortable. The landlord denied the wind blew through the cracks.

The tenant said items vii to x are based on 12.5% of the rent for the rented space of 8 rooms. A neighbour gave evidence. She said she saw mould on the kitchen counter before and after the landlord did some work on it; in her estimation, it should have been totally sanded and sealed and it was not. She saw the broken kitchen window and it seemed substantial to her and took several months to replace. She said there was no water in the living room but the tenants moved their furniture in case it came through. She said the Police were present when the tenants moved out.

In evidence is the Notice to End Tenancy for unpaid rent, the tenancy agreement, the monetary claim, many emails, a Notice to End Tenancy from the tenants to be effective February 28, 2015, a forwarding address dated March 9, 2015, emails concerning the washing machine on September 13, 2015, other correspondence, receipts and photographs.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

As explained to the parties in the hearing, the onus is on each applicant to prove on a balance of probabilities their claim. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find there was a fixed term lease expiring on May 30, 2015 with a monthly rent of \$975. In usual circumstances, the tenants would be responsible for rent until the end of the fixed term or until the landlord accepted the end of the tenancy and re-rented. In this case, the tenants said they received a ten day Notice and they responded to this 'illegal' Notice by moving out. According to section 46 of the *Act*, the tenant had two options. They could pay the rent within 5 days of receiving the Notice or file an Application to dispute the Notice. They did neither but moved out instead. I find that vacating the unit does not absolve them from paying rent on a fixed term lease. However, the landlord did not proceed legally on the Notice to End Tenancy by obtaining an Order of Possession; instead, he violated the *Act* and took possession by changing the locks on March 8, 2015 (as he said in the hearing and also as stated in his emails where he tells the tenants they may not enter the property again or they would be guilty of trespass). I find the tenants liable for rent only from March 1-8 until the landlord repossessed the property. I find they did not return the keys to the landlord and he did not have a key to the premises because he had told them that keys could be given to him at the end of the tenancy. I find the landlord entitled to \$251.61 (\$31.45x8) for unpaid rent for March 2015 and \$60 for keys. I find according to Residential Tenancy Regulation 24, the necessary criteria for the landlord to determine abandonment were not met as the tenancy agreement had not ended and the landlord

had not received specific notice of the tenants' intention not to return to the residential property. Therefore, I find he was not conforming to the Act when he repossessed the property without obtaining an Order of Possession and is not entitled to rent for the period after he repossessed the property without the necessary authority.

I find the tenants not entitled to the doubling of their deposits. In evidence is a note with their forwarding address dated March 11, 2015; the weight of the evidence is that they moved most of their belongings on March 7, 2015 but had many belongings still on the property. Their email to the landlord dated February 13, 2015 states they appreciated the consent to end the fixed term lease effective March 31, 2015 and they wanted to continue on a month to month agreement after that and would return the keys at the end of the tenancy. I find the keys had not been returned after they moved most of their belongings on March 7/8 and they had not provided a certain intention or notice to the landlord that their tenancy was ending earlier than March 31, 2015. According to section 38 of the Act, the landlord has 15 days from the later of the date of the end of the tenancy and receiving the tenants' forwarding address in writing to refund the deposit or file an Application for Dispute Resolution. I find the landlord filed his Application on March 31, 2015 which is within time to claim against the deposit and avoid the doubling provision in section 38.

I find the tenants not entitled to recover \$246.39 for a kitchen island they bought and took with them. I find insufficient evidence that the purchase was necessitated by mould on the kitchen counter or that the cost was incurred due to a violation of the landlord. Neither the tenants nor their witness are experts on mould and I find the landlord's evidence credible that the butcher block counter top was discoloured and he refinished it. Likewise, I find the tenants not entitled to recover \$731.28 as claimed for six months of mould on the kitchen counter as I find insufficient evidence of mould; I find the photographs show some discolouration on the butcher block. I find section 32 of the Act requires the landlord to maintain the premises in a state of decoration and repair that conforms to safety and housing standards and, having regard to the age and character of the house, makes it suitable for occupation by the tenant. I find insufficient evidence that the landlord was not maintaining the kitchen counter to these standards.

I find the tenants not entitled to recover \$220 for a washing machine that they took with them. I find it credible that the washing machine in the premises was noisy; the landlord agreed that it was squeaky but he said it is still in use with current tenants. I find insufficient evidence that the landlord's washing machine was not useable and had to be replaced although the tenants preferred not to deal with the loud noise. I find them not entitled to recover compensation (\$365.64) for a broken washer as the weight of the evidence is that it was still useable and still being used by subsequent tenants.

The tenants are no longer claiming for the lawnmower and weed whacker as they were returned.

Although the tenants found many items in the home that were not to their standards and claim that they were forced to move because of the 10 day Notice to End Tenancy and the state of the roof, I find they were not forced to move as they could have disputed the 10 day Notice or paid their rent and made an Application to the Residential Tenancy Branch to obtain an order for repairs that they considered necessary. Instead they chose to move and break their fixed term lease. I find insufficient evidence that the landlord through act or neglect forced this move. I find them not entitled to recover their moving costs.

I find insufficient evidence that there was a roof leak over the living room. I find the female tenant's evidence was inconsistent with the male tenant's, the witness and the landlord's. I find the weight of the evidence is that no water actually entered the living room although there was a stain on the ceiling. I find them not entitled to recover \$121.88 for a roof leak.

In respect to the broken window panes, I find the weight of the evidence is that the panes were cracked in three rooms and the tenants were concerned over the high winds in their area. However, I find insufficient evidence that these cracks caused problems to the tenants. The landlord said they had been cracked for many years and he sent a glass company to replace the windows when one apparently shattered; he did not know the cause of the breakage. I find the tenants knew of the cracked windows when they moved into the home, I find insufficient evidence that the landlord violated the Act or tenancy agreement by not replacing the windows as there is insufficient proof of harm or loss incurred by the tenants before the window shattered. I find the weight of the evidence is that the landlord acted immediately to replace the windows when this damage occurred. I find the tenants not entitled to recover a rebate of rent for cracked window panes.

In conclusion, I find the tenant not entitled to recover compensation as claimed on their Application and I dismiss this portion of their Application. I find them entitled to their original security deposit less amounts awarded to the landlord for the reasons stated above.

Conclusion:

I find the landlord entitled to recover 251.61 for unpaid rent for March 2015 and \$60 for keys not returned. I dismiss the application of the tenant for compensation for losses

and rebate of rent. I find the landlord entitled to retain a portion of the deposits to offset amounts owing. I find both parties entitled to recover filing fees for their applications; although both did not behave in accordance with the Act, I find both Applications had some merit.

Calculation of Monetary Award:

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| Security and pet damage deposits (credit Tenant) | 587.50 |
| Filing fee to tenant | 50.00 |
| Less rent March 1-8 plus key reimbursement -landlord | -311.61 |
| Less filing fee to landlord | -50.00 |
| Total Monetary Order to Tenant | 275.89 |

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 12, 2015

Residential Tenancy Branch

