



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing convened as a result of cross applications. In the Landlords' Application for Dispute Resolution they sought authorization to keep all or part of the security deposit, a Monetary Order for unpaid rent, money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee. The Tenants sought return of double the security deposit and to recover the filing fee.

The hearing commenced on March 11, 2015 and continued on April 27, 2015. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?
2. Are the Tenants entitled to monetary compensation from the Landlords?
3. Should either party recover the fee paid to file their application?

Background and Evidence

The Landlord, V.M. testified as to the terms of the tenancy as follows: the tenancy began June 18, 2011; monthly rent was payable in the amount of \$1,350.00; the Tenants paid a security deposit of \$675.00 on May 24, 2011; and, the Tenants further paid a pet damage deposit of \$300.00 on June 25, 2011.

V.M. stated that a move in inspection occurred on June 18, 2011. A copy of the report was introduced in evidence.

A previous hearing occurred on July 8, 2014. At this hearing, the presiding Arbitrator dismissed the Tenants' claims for orders pursuant to section 32, 62 and 72 as the Tenants indicated they intended to vacate the rental unit as of the effective date of the notice; namely: July 31, 2014.

At the within hearing, the V.M. testified that the Tenants vacated the rental unit in July of 2014, following which, on July 31, 2014 a move out Condition Inspection was conducted. The move out Condition Inspection Report was also in evidence and signed by the Tenant, D.S.

During the April 27, 2015 hearing, the Landlord confirmed that she took photos of the rental unit after completing the move out Condition Inspection Report. Further, she testified that she changed the move out Condition Inspection Report, after it was signed by the Tenant,

The Landlord applied for dispute resolution on August 14, 2014.

V.M. confirmed that she was not able to rent the rental unit for August 1, 2014 because of the derogatory postings the Tenants were making on popular internet rental sites. Introduced in evidence was a document drafted by the Landlord which suggested that 20 such individual posts were made between August 8, 2014 and August 20, 2014. The Landlord also introduced in evidence copies of a number of these posts which included such text as the following:

"RENTERS BEWARE...

These are the landlords you want to avoid at all costs. They are abusive, rude, hostile, and confrontational to their tenants.

[Reproduced as Written]

V.M. testified that she believed the above ads affected her ability to rent the rental unit as after she scheduled showings with prospective tenants, they would cancel. She stated that the current tenant said she was reluctant to see the rental unit because of the postings, but thought she would “try”. She only told the Landlord after she signed the lease that she was aware of the previous Tenants’ internet postings. The rental unit was re-rented as of September 1, 2014.

At the hearing, V.M. confirmed that she sought compensation for the following:

Carpet and duct cleaning	\$318.45
Replacement of door which she alleges was damaged by Tenants’ pets	\$2,595.60
Cleaning charges	\$142.80
Painting of areas damaged by Tenants	\$650.50
Lost rent for August 2014	\$1,350.00
Lost contribution to utilities for August 2014	\$150.00
Filing fee	\$50.00
TOTAL CLAIMED	\$5,114.56

Submitted in evidence were copies of receipts for the above expenses. V.M. confirmed that she did not seek reimbursement for the total cost of painting the rental unit, only the costs associated with the areas which were damaged by the Tenants.

The Tenants were advised that pursuant to section 21 of the *Residential Tenancy Regulation*, a Condition Inspection Report is accepted as evidence of the condition of the rental unit as at the date of the report, unless there is a preponderance of evidence to the contrary.

D.S. testified on behalf of the Tenants. He agreed that a move in and move out Condition Inspection Report had been conducted, but submitted that he took issue with the contents and evidentiary value to be ascribed to the Reports as he submitted they did not comply with section 20(1)(k) of the *Regulations* in that even though the Tenants signed the report, there is no indication on the reports that the Tenants *agreed* to the contents. On the move out Report, D.S. wrote “I was in attendance”. D.S. further confirmed the Tenants did not submit any evidence which would refute the contents of the Condition Inspection Report.

In terms of the items claimed by the Landlords the Tenants stated the following:

- They opposed the \$318.45 in carpet and cleaning claiming to have cleaned the carpets on July 28, 2014. D.S. stated that they used a professional grade carpet cleaner and pet solution to clean the carpets before they vacated the rental unit. D.S. further testified that there were no ducts to clean.
- The Tenants also opposed the Landlords' claim for costs to replace the patio door stating that the door was not new, they had no idea how the door was damaged, and in any case, never heard their dog scratching on the glass. D.S. further testified that their dog was only 18 inches high, and that the photos on the door were some five feet high, therefore not possibly done by their dog.
- In terms of the Landlords' claim for cleaning costs, D.S. testified as follows:
 - they had to clean when they moved in and left the rental unit in better condition than when they first moved in;
 - the Landlords failed to show them how to safely and properly move the appliances, and as such they were not able to clean under the refrigerator and stove;
 - the oven was not cleaned but that was because when they moved in they had a self-cleaning oven, after which the Landlords replaced the oven with a basic oven;
 - they did not clean the dishwasher, but suggested it would have taken two minutes to clean it in any case; and,
 - the sink and in the cupboards were simply left as they were found when the Tenants moved in.
- In terms of the Landlords' claim for painting costs, D.S. testified as follows:
 - the rental unit needed to be painted in any case;
 - the tenants repaired all the holes with filling compound;
 - the paint provided by the Landlords didn't match and prevented the Tenants from painting;

- the master bedroom wall colour was completely different than the colour provided by the Landlords;
- In terms of the Landlords' claim for lost rent for August 2014 and the effect of the negative internet posts, D.S. testified as follows:
 - he did not post on the internet rental sights;
 - he was not aware if his wife, the other Tenant, had done so;
 - he did not consider the posts would affect the Landlords' ability to re-rent as he believes the posts were simply an expression of free speech
- In terms of the Landlords' claim for lost rent for August 2014, T.S. testified as follows:
 - she was responsible for the posts;
 - the last one she did was in December of 2014;
 - the Landlords did not start advertising until August 8, 2014, failed to show the rental unit and therefore did not mitigate their loss; and,
 - the Landlords rented the rental unit for more than they paid and could have rented it earlier had they not increased the rent.

T.S. testified that they moved out of the rental unit on July 27, 2014, cleaned the carpets and bathrooms on July 28, 2014 and provided their forwarding address on July 31, 2014 at the time of completing the move out Condition Inspection.

T.S. confirmed they did not sign over any portion of the security deposit.

Analysis

After careful consideration of the relevant evidence before me, and on the balance of probabilities, I find as follows.

While it is difficult to believe that the Tenants would sign the move in and move out Condition Inspection Reports, disagree with the contents, yet fail to indicate on the Reports that they took issue with the contents, it is the case that the Reports do not comply with the Regulations as required by section 23(4) of the *Act*. Specifically, section 20(1)(k) of the Regulations provides that the following statement *must* be included in a condition inspection report:

I,.....

Tenant's name

[] agree that this report fairly represent the condition of the rental unit.

[] do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

.....
.....

As the report was not completed in accordance with Part 3 of the *Regulations*, the Landlords' right to claim against the security deposit is extinguished pursuant to section 24(2)(c) of the *Act*. Accordingly, the Landlords had not right to claim against the security deposit and must return double the security deposit pursuant to section 38(6)(b), namely **\$1,950.00** [\$675.00 (security deposit) + \$300.00 (pet damage deposit) = \$975.00 x 2 = \$1,950.00).

Although the Landlords may not claim against the security deposit, the Landlords may still pursue a Monetary Order pursuant to section 67.

The Tenants confirmed they did not clean under the appliances, did not clean the dishwasher and did not clean the cupboards and cabinets, claiming they left them in the same condition as they say they found them when they moved in. Further, the Tenants did not provide any evidence which would support their claim that the rental unit was in better condition than that claimed by the Landlord.

Conversely, the Landlord submitted a move out Condition Inspection Report which although not agreed to by the Tenants, clearly noted the claimed deficiencies at the time the tenancy ended. Further the Landlords submitted receipts for the expenses incurred to clean and repair the rental unit as well as photos of the rental unit.

Clause 10 of the Residential Tenancy Agreement provided as follows:

10. Termination of Tenancy: One full-month notice is required for termination of tenancy,. The unit must be left in the same condition as upon move-in, including professionally cleaning carpet and returning walls to the original paint colour if changed or altered.

The Tenants failed to submit any evidence which would support a finding that they professional cleaned the carpets. Further, they acknowledged they did not return the walls to the original paint colour claiming the Landlord provided them with inaccurate paint.

The Landlords submitted that the Tenants replaced the flooring in the rental unit such that they had previously moved the appliances; I reject the Tenants claim that they were not informed how to safely and appropriately move the appliances. In any case, there is no evidence that they made an effort to attend to this cleaning.

The Tenants admitted during the hearing that their dog damaged the trim piece and that they moved the trim in an attempt to repair the damage. Notably, the photos which appeared to be higher up on the door simply showed missing trim which presumably was moved by the Tenants to the lower part of the patio door. Although the Tenants conceded their dog damaged the trim, they denied that their dog scratched the glass.

I accept the Landlords testimony that a new patio door was installed during the tenancy. I further accept the Landlords' testimony that the damage caused to the door, including the trim and scratched glass, was as a result of the Tenants' pet. I further accept the Landlords' testimony that the damage was so extensive as to require replacement of the door and I therefore grant the Landlords' request for compensation in the amount of \$2,595.60 for the new patio door.

I accept the Landlords' evidence with respect to the condition of the rental unit at the end of the tenancy and grant their request for compensation for the associated cleaning, repair and painting costs.

I also accept the Landlords' evidence that it was not possible to show the rental unit while the Tenants were in occupation. As the Tenants vacated the rental unit on July 31, 2014, it would have been very difficult for the Landlords to re-rent the rental unit for August 1, 2014. The information which was posted on the internet by the Tenant, T.S., speak volumes about the animosity felt by the Tenants towards the Landlords; I find that they support the Landlords' position that it would not have been possible to show the rental unit before August 1, 2014. Further, I accept the Landlords' evidence that the internet posts had the effect of dissuading prospective tenants from renting the rental unit. In all the circumstances I grant the Landlords' request for lost rent for the month of August 2014.

As the rental unit remained vacant for the month of August 2014, I decline the Landlords' request for compensation for \$150.00 towards the utilities.

I find that the Landlords have met the burden of proving their claim for a Monetary Order pursuant to section 67 for compensation for damages or loss and award them **\$4,457.35** for the following expenses:

Carpet and duct cleaning	\$318.45
Replacement of door damaged by Tenants' pets	\$2,595.60
Cleaning charges	\$142.80
Painting of areas damaged by Tenants	\$650.50
Lost rent for August 2014	\$1,350.00
TOTAL AWARDED	\$4,457.35

As I have also awarded the Tenants the sum of \$1,950.00, the amounts are to be offset against one another such that the Tenants shall pay the Landlord the sum of **\$2,507.35**. The Landlords are granted a Monetary Order in this amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Tenants are cautioned against posting potentially libelous and slanderous information on the internet. Should the Tenants continue to post such information on the internet the Landlords are at liberty to apply for aggravated damages.

Conclusion

The Landlords extinguished their right to claim against the security deposit and as such must pay the Tenants double the security deposit pursuant to section 38(6)(b).

The Landlords' claim for monetary compensation from the Tenants is granted in part. The amounts awarded to each party are offset against one another such that the Tenants shall pay **\$2,507.35** to the Landlords and the Landlords are granted a Monetary Order for this amount.

Neither party shall recover the fee paid to file their application.

The Tenants are cautioned against posting potentially libelous and slanderous information on the internet. Should the Tenants continue to post such information on the internet the Landlords are at liberty to apply for aggravated damages.

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 20, 2015

Residential Tenancy Branch

