



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with monetary applications by the landlord and the tenant. The landlord, a witness for the landlord and both tenants participated in the in-person hearing.

This matter first commenced on October 9, 2014, pursuant to the tenants' application. On that date, the landlord informed the arbitrator that she had filed a monetary application of her own. The arbitrator determined that the two applications were closely linked and it was appropriate to adjourn the tenants' application to be joined and heard together with the landlord's application.

The hearing reconvened with me on April 30, 2015. At the outset of the reconvened hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. The parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?
Are the tenants entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on September 1, 2013. The rental unit was a furnished suite. The tenancy agreement indicates that the tenancy was to be for a fixed term beginning on September 1, 2013. The end date of August 31, 2014 is crossed out, and below that date the landlord wrote "May 1, 2014." The landlord confirmed that she wrote and

corrected an additional note on the tenancy agreement, as follows: "Sept. 1/13 cheque upon move-in 8 1/2 months (post-dated cheques from Oct. 1 – ~~Aug. 31~~ May 1/14."

Rent in the amount of \$1100 was payable in advance on the first day of each month, and the tenants were responsible for two-thirds of the hydro bills. The tenancy agreement also contains clauses indicating that the tenants were not to use any abrasive cleaners on the stove top and not to use the auto clean for the stove, only hand clean; and all carpets and curtains must be professionally cleaned on move-out.

At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$550. On September 1, 2013 the landlord and the tenants carried out a move-in inspection and completed a condition inspection report.

The tenants vacated the rental unit on April 30, 2014. On that date, the landlord and the tenants carried out a move-out inspection and signed the condition inspection report. The report indicates that the tenants agreed to deductions from their security deposit, the amount "to be determined upon notification from cleaning company / replacing items and hydro bill." The tenants provided their forwarding address in writing on the report.

On May 13, 2014 the landlord personally served the tenants with some documents, including a letter in which the landlord indicated that the tenants owed the landlord a total of \$614.72, for replacement of a stained sofa; replacement of missing pots, dishes and other kitchenware; unpaid hydro; and costs for cleaning the stove, carpets and curtains. The landlord indicated that after deducting the \$550 security deposit, the tenants owed the landlord \$64.72.

On June 11, 2014 the tenants applied for double recovery of their security deposit. On September 26, 2014 the landlord made her application for monetary compensation and an order to retain the security deposit. In addition to the amount of \$614.72 claimed in her letter, the landlord added a claim for \$1100 in unpaid rent for May 2014.

Tenants' Claim

The tenants applied for double recovery of their security deposit. The tenants gave the landlord their forwarding address in writing on the last day of the tenancy, April 30, 2014. The tenants stated that when the landlord gave the tenants her letter and receipts on May 13, 2014, she did not give them their copy of the move-out condition inspection report. In the hearing, the tenants submitted as evidence the original letter and receipts they received from the landlord. The letter and receipts were stapled together, and it did not appear that at any point another document, such as the condition inspection report,

had been stapled together along with the letter and receipts. The tenants submitted that the landlord breached section 36 of the Act by failing to give the tenants a copy of the condition inspection report within 15 days of the landlord receiving the tenants' forwarding address in writing.

The landlord responded that she gave the male tenant a copy of the move-out inspection report along with her letter on May 13, 2014. The landlord later stated that the tenants could have asked for the condition inspection report.

Landlord's Claim

The landlord claimed compensation as follows:

- 1) \$228.35 for the tenants' portion of the Hydro up to April 23, 2014 and an estimated \$35 for Hydro from April 24 to 30, 2014 – the landlord submitted a bill for Hydro up to April 23, 2014;
- 2) \$157.78 for replacement of stained sofa – at the move-out inspection on April 30, 2014, the landlord and the tenants removed the cover from the sofa and discovered stains. The landlord stated that a professional carpet cleaner gave the landlord his opinion that the stains could not be removed. The landlord stated that the sofa was purchased new in mid-2013 for approximately \$600. The landlord replaced the sofa with a futon that cost \$157.58 and provided the receipt for this purchase;
- 3) \$61.59 for “replacement of pots / frying pan” – the landlord stated that some of the pots and the frying pan were missing at the end of the tenancy. The landlord provided a receipt for these items;
- 4) \$26 for “replacement of (4) placemats / utensils (missing kni[v]es ([illegible]) [illegible], etc.” – the landlord did not submit a receipt for these items;
- 5) \$106 for cleaning stove / carpets / curtains – the landlord stated that the stove was not clean, and the carpets and curtains had not been professionally cleaned, as required in the tenancy agreement. The landlord submitted one photograph of a small area of the inside of the oven, which appeared to have several small splatters, but she did not submit any receipts for this work; and
- 6) \$1100 for unpaid rent for May 2014 – the landlord stated that the fixed-term tenancy was to end on May 31, 2014, and she erroneously indicated that the tenancy ended on May 1, 2014. The landlord did not provide any evidence that she attempted to re-rent the unit for May 2014.

The tenants responded that they acknowledged the Hydro bill. They also acknowledged that the sofa was stained. The tenants acknowledged that they signed the tenancy agreement which listed the items provided by the landlord, but they did not actually look

in the cupboards and check for each individual item on the list. The tenants stated that they did not recall that any of the replaced items were ever in the unit, and the landlord did not provide the age or value of the items she claimed were missing.

The tenants stated that they cleaned the oven according to the landlord's instructions, but it was a self-cleaning oven and this function should have been used to properly clean it.

The tenants stated that they and the landlord clearly understood that the tenancy was to be for a fixed term ending on May 1, 2014. In the hearing the tenants presented a letter they had received from the landlord in September 2013, in which the landlord indicated that the tenants should provide seven more post-dated cheques.

Analysis

Tenants' Application

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution, unless the tenant has agreed in writing that the landlord may keep part or all of the deposit. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

In this case, the tenancy ended on April 30, 2014, and the tenants provided their forwarding address in writing on that date. I find that the issue of whether or not the landlord properly served the tenants a copy of the condition inspection report is not relevant. I find that the tenants did not agree in writing for the landlord to retain a specific amount from the security deposit. The landlord was therefore required to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenants' forwarding address in writing and she failed to do so. I therefore find that the tenants have established a claim for recovery of double the security deposit in the amount of \$1100.

Landlord's Application

Upon consideration of the evidence I find as follows in regard to the landlord's claim:

- 1) Hydro – the landlord is entitled to \$228.35 for the tenants' portion of the Hydro up to April 23, 2014. The tenants acknowledged that they owed this amount. I find that the landlord is not entitled to the estimated amount of \$35 for Hydro from April 24 to 30, 2014, as the landlord had ample time to provide a bill for this amount but did not do so.
- 2) Stained sofa – I find that the landlord is entitled to \$157.78 for replacement the stained sofa. Based on the photographs, I accept the landlord's evidence as likely that the sofa could not be cleaned. I also accept that the sofa was purchased new in mid-2013 for \$600, and it therefore would not have depreciated significantly over the course of one year. The landlord very reasonably minimized the replacement cost for the sofa.
- 3) Replacement pots and frying pan – I find that the landlord is not entitled to this amount, as she did not provide sufficient evidence, such as the age and value of the missing pots and frying pan, to support this portion of her claim.
- 4) Replacement of other kitchen items – I find that the landlord is not entitled to this amount, as she did not provide sufficient clear evidence, such as receipts or clear descriptions of the items, to support this portion of her claim.
- 5) Cleaning of stove, carpets and curtains – I find that the landlord is not entitled to the amount claimed for this work, as she did not provide a breakdown of the specific costs for cleaning each item and she did not provide any invoices for this work.
- 6) Unpaid rent for May 2014 – I find that the landlord is not entitled to this amount. I find it more likely than not, based on the evidence presented, that the tenancy was to end on May 1, 2014. Further, the landlord was aware in mid-March 2014 that the tenants would be vacating on April 30, 2014; however, she did not provide any evidence that she attempted to mitigate her loss by taking reasonable steps to re-rent the unit for May 2014.

Filing Fees

As the tenants' application was successful, they are entitled to recovery of the \$50 filing fee for the cost of their application.

As the landlord's application was partially successful, she is entitled to recovery of the \$50 filing fee for the cost of her application.

Conclusion

The tenants are entitled to \$1150. The landlord is entitled to \$436.13. I grant the tenants an order under section 67 for the balance due of \$713.87. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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

