Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on October 27, 2014 seeking to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or Utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by two Landlords and both Tenants. Each party gave affirmed testimony and the Tenants confirmed receipt of the application and evidence served by the Landlord. The Tenants noted that they did not receive any RTB Fact Sheets with the Landlord's application.

The application was filed listing one corporate landlord. Therefore, as there were submissions from two Landlords during the hearing, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

The undisputed evidence was that the Tenants had entered into subsequent fixed term tenancy agreements. The Tenants occupied the property as of September 1, 2011 and their last written tenancy agreement was for a fixed term that began on September 1, 2013 and ended August 31, 2014. Rent of $2,700.00 was due on or before the first of each month and on August 29, 2011 the Tenants paid $1,350.00 as the security deposit.

The Landlords testified that on May 26, 2014 they served the Tenants written notice that they would not be entering into a subsequent tenancy agreement and the Tenants were required to vacate the rental unit effective August 31, 2014.

An unsigned copy of a move-in and move-out condition inspection report form was submitted in the Landlord's evidence. The Landlords argued that they conducted a walk through with the Tenants at move in but that it was such a busy time they simply forgot to ask the Tenants to sign the document. As for the move out inspection, a different property manager handled that so the Landlords could not submit evidence as to why the move out condition form had not been signed.

The Tenants testified and confirmed that they attended a walk through at the rental unit with a Landlord at move in and at move out. They argued that they were not busy at the move in as their furniture had not arrived at that time. They asserted that they were never asked to sign a condition report form nor did they see one being completed during their inspections.

The Landlord now seeks compensation in the amount of $3,730.86 which is comprised of the following:

1) $341.36 for the final water bill which was submitted into evidence and was for the period of May 1, 2014 to August 31, 2014;
2) $94.50 for the furnace repair
3) $145.00 for the final natural gas bill
4) $200.00 for the cost to touch up the paint.
5) $2,000.00 for carpet damage
6) $150.00 for costs to clean the window blinds
7) $200.00 for general cleaning and repairs
8) $100.00 for pool repairs

Upon review of the foregoing items the Landlords stated that they believe the natural gas bill, item # 3 had been paid; therefore, they were no longer seeking that $145.00. The Landlords submitted that the rental unit was a house that was built in 1960 and had been remolded in 2006.

The Landlords testified that the amounts claimed were approximations or estimates and no receipts or invoices were submitted for items 2 through 8 listed above. Since the tenancy ended they have had the blinds cleaned for approximately $149.00 and the carpets replaced at a cost of $2,728.83. The Landlords were not aware of the actual

age of the carpets and asserted that based on their understandings from photographs that they had seen the carpets were new or appeared to be newly installed in 2006.

The Tenants testified and accepted responsibility to pay for the water bill and noted they had not seen a copy of this bill until they received the Landlord's application. The Tenants disputed the remaining seven items claimed.

The Tenants argued that the furnace was not working so they reported it to the Landlord. It was the Landlord who chose to hire a maintenance person; therefore, the Landlord should pay for the maintenance or repair.

The Tenants asserted that the last natural gas bill for their tenancy had not been paid and they have never seen a bill for that period. Rather, they recently found out that there had been a mix up with the natural gas company continuing to charge them for natural gas at the rental unit, for several months after they moved out, which the Tenants had paid in error. The Tenants stated that they suspect they have paid an amount for a period after their tenancy which exceeded what their last bill would have been.

The Tenants argued that they do not know what the paint touch up claim was referring too as there was no mention about painting at their move out.

The Tenants submitted that during their tenancy it was determined that the furnace oil tank was leaking. As a result, the Landlord hired contractors to switch from oil heat to natural gas heat. During that construction the Tenants said they saw the contractors move the fountain around and they suspect that it may have broken at that time. They stated that they do not know of any other situation that would have caused the fountain to break as they did not break it.

The Tenants argued that when they first moved into the rental unit they were told not to worry about the carpets because they were scheduled to be replaced after their tenancy. They noted that the Landlord at that time even apologized for the poor condition of the carpets. The Tenants asserted that they had the carpets steam cleaned at the end of their tenancy and that they are not responsible to pay for new carpets.

The Tenants testified that they had 17 people assisting them in cleaning the rental unit at the end of their tenancy which included cleaning the blinds. They noted that the Landlord praised them for the level of cleaning they had completed and that she stated that it was the best cleaning she had seen in her twenty years of experience.

The Tenants submitted that they were not sure what the Landlords' claim for pool repairs as there was no indication of what was done. They argued that the pool was old and in need of repairs when they first moved into the rental unit which was not their responsibility.

The Landlords asked the Tenants if they had receipts to prove they had the blinds cleaned. The Tenants responded that they had friends who were professional cleaners who cleaned the blinds. The Tenants argued that a receipt alone does not represent the cleanliness of the blinds.

In closing the Landlords confirmed that they are still in possession of the Tenants' security deposit of $1,350.00.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The party making the claim for damages must satisfy **each** component of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the Act or an agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act and did whatever was reasonable to minimize the damage or loss.

The Tenants did not dispute the Landlords' claim for the final water bill, as supported by the invoice provided in the Landlord's evidence. Accordingly, I grant the Landlord's application for the final water bill in the amount of **$341.36.**

In the case of verbal testimony when one party submits their version of events, in support of their application, and the other party disputes that version, it is incumbent on the party making the application to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or

to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

In the presence of the Tenants' disputed testimony, and in the absence of signatures on the condition inspection form, I find there is insufficient evidence to prove the condition inspection report form was completed in the presence of the Tenants. As no other documentary evidence was submitted regarding the condition of the rental unit I conclude that the Landlords provided insufficient evidence to prove the condition of the rental unit at move in or at move out.

The Landlords did not submit documentary evidence to verify the actual amount of the items claimed. Accordingly, I find there was insufficient evidence to prove that repairs were required as a result of this tenancy, that the repairs were in fact completed, or the actual cost of the repairs. Therefore, I dismiss the remaining items (# 2 through # 8 as listed above) claimed on the Landlord's application, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has partially succeeded with their application; therefore, I award partial recovery of the filing fee in the amount of **$25.00**, pursuant to section 72(1) of the Act.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Final water bill	$ 341.36
Filing Fee	25.00
SUBTOTAL	$ 366.36
LESS: Security Deposit $1,350.00 + Interest 0.00	-1,350.00
Offset amount due to the Tenants	**($ 983.64)**

The Landlord is hereby ordered to return the $983.64 balance of the security deposit to the Tenants' forthwith.

Conclusion

The Landlord has partially succeeded with their application and has been awarded compensation of $366.36 which was offset against the Tenants' security deposit. The Landlord has been ordered to return the balance of the Tenants' security deposit in the amount of $983.64.

In the event the Landlord does not comply with the order to return the balance of the security deposit the Tenants have been issued a Monetary Order for **$983.64**. This

Order is legally binding and must be served upon the Landlord. In the event that the Landlord still does not comply the Order may be filed with 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: June 10, 2015

Residential Tenancy Branch