



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF, MNDC, FF, O

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant which have been joined to be heard together, by consent. The landlords have applied for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for an order permitting the landlords to keep the security deposit or pet damage deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlords.

Both landlords and the tenant attended the hearing and the tenant was represented by legal counsel. One of the landlords gave affirmed testimony and the tenant's testimony was provided in the form of a sworn Affidavit, subject to cross examination, and the tenant provided affirmed testimony. The parties were given the opportunity to question each other respecting the evidence and testimony provided, including the tenant's Affidavit all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the landlords established a monetary claim as against the tenant for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenant for damage to the unit, site or property?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this fixed term tenancy began on October 13, 2014, expiring on June 30, 2015, however the tenant moved out of the rental unit on January 31, 2015. Rent in the amount of \$1,400.00 per month including utilities was payable in advance on the 1st day of each

month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$700.00 which is still held in trust by the landlords, and no pet damage deposit was collected. A copy of the tenancy agreement dated September 19, 2014 has been provided and the landlord testified that a pro-rated amount of rent was collected for the first month of the tenancy.

The tenant sent to the landlords a Mutual Agreement to End Tenancy by email which contained an incorrect name for a landlord, an incorrect date, and the landlords weren't able to move forward with it so replied with an email that the landlords would accept a move-out date of January 31, 2015.

The tenancy agreement provides for late fees of \$25.00 per day if rent isn't paid on time, and the landlord testified that the tenant paid rent late on November 3, 2014, for which the landlords claim \$50.00 for 2 days; December 3, 2014 for which the landlords claim another \$50.00 for 2 days.

The landlords also claim \$773.00 for 2 twin mattresses and covers purchased weeks prior to the commencement of the tenancy. The tenancy agreement provides that the tenant will pay an additional \$100.00 per month for the purchase of the beds, and a murphy bed was also left in the rental unit for the tenant's use complimentary. No amount is mentioned in the tenancy agreement, but the claim is for the amount remaining on the cost of \$900.00 for the beds and \$39.99 each, plus taxes for the mattress covers, purchased by the landlords in June, 2014 but were never used prior to this tenancy and were still in the packaging. The tenant paid \$100.00 each month for November and December as well as a pro-rated amount for November, but did not pay anything in January. The tenant agreed to pay for the beds and they would become his property at the end of the tenancy. If not, the landlords would have 2 useless beds, but the tenant refused to take them. The landlords claim \$773.00 for the balance owing.

A Move-in condition inspection report was completed the day prior to the move-in day, and a copy has been provided with signatures of the landlords and the tenant. The landlord testified that the rental unit was brand new construction in December, 2013. A move-out condition inspection report has also been provided. The landlord testified that at the end of the tenancy, all carpets were stained, deep cleaning to the entire rental unit was required, including blinds, walls, trim, baseboards, appliances, light fixtures, interior and exterior doors. The landlords have provided photographs and testified that they were taken on January 31, 2015 while the tenant was present. The tenant also left a dresser in the rental unit for the landlords to dispose of. An invoice in the amount of \$378.00 has been provided for deep cleaning as well as an Invoice in the amount of \$94.50 for carpet cleaning.

The carpets could not be cleaned despite the carpet cleaner attempting twice. The tenant left very large permanent damages throughout. The landlords have not yet replaced the carpets but have provided an invoice in the amount of \$2,808.75 and stated that carpet in one room to match that of another is no longer available.

The landlord also testified that approximately 80% of all walls and trim in the rental unit were damaged with holes, scrapes and dents peppered throughout. An Invoice in the amount of \$1,375.00 has been provided for paint and repair. The rental unit is the lower level of the landlords' home, and the landlords were away for the first 39 days of the tenancy.

The landlords also claim \$125.00 for the tenant obtaining a fireplace for the rental unit without the landlords' authorization. The landlord discovered it during an inspection with the tenant on December 13, 2014 and didn't know its age or whether or not it was safe. The fireplace caused the electric company to flag the home as showing a substantial increase. The heat in the rental unit is controlled in the landlords' unit which is set at 69 degrees. The landlords researched it and found that amount claimed to be reasonable for over-use of the utility. The landlord does not know when the fireplace arrived but the tenant removed it on December 26, 2014 as requested by the landlords. Copies of correspondence between the parties show that the tenant has not objected to paying that amount but hasn't paid it.

The landlords also claim \$45.53 for replacing a lock. The lock was placed there by the landlords at the request of the tenant and then the tenant lost the key, so the landlords had to replace the lock. A copy of a receipt has been provided.

The landlords also claim \$350.00 for an over-consumption of utilities during the holiday season. The rental unit had 9 people for a few days, less than one week during which time entrances and electrical boxes were blocked, the furnace area was obstructed with pots, pans and other items piled high to the ceiling, and on-going obstructions to the bedroom area, and little space to the washer area. Bills have been provided for which the landlord testified show a substantial increase in utility costs. The amount claimed is based on the bills and usage.

The landlords also claim \$199.00 for dryer repairs and the landlord testified that upon moving in, there were no exterior damages, but upon move-out, the entire top is totally marked and is a wreck. The landlord has been trying to sell it and it's listed on line for what he considers a reasonable price, but it's very badly damaged. The landlords have not yet replaced it.

The landlords also claim \$50.00 for scratches on the glass top of the range which was not the condition at the outset of the tenancy. Racks are now burned and horrible and the tenant was told not to leave the racks in when the range was in self-cleaning mode. The landlord sustained a financial loss when it was sold.

The landlord also testified that the stainless steel dishwasher was purchased for over \$600.00 and installed in the rental unit about a week after the tenancy began and was only used by the tenant. At the end of the tenancy there were deep scratches on the door. The landlords sold it in April, 2015 for \$420.00 and sustained a financial loss. The landlords claim \$100.00 against the tenant for the loss.

The landlords also claim \$390.00 for damage to laminate flooring. The tenant was given instructions on care and was cautioned against what product to use, excessive moisture & general

care. At moved-out, it's loose, floppy, and edges are lifting. The landlords have a flooring company and lay such flooring all the time. The house is currently listed for sale and realtors have complained about it. The claim is for material (glue) and 1 day labor of approximately \$350.00 for the repairs by the landlords' flooring business.

The landlords also claim \$21.27 for the cost of providing photographs for this hearing, \$630.00 for the preparation for this hearing, and recovery of the \$100.00 filing fee. The landlords' claim totals \$7,538.05.

With respect to the tenant's application, the landlord testified that repeated safety violations and unreasonable behaviour regarding appliances were reported to the tenant during the tenancy that the tenant could have resolved. The tenant used the laundry appliances 11 hours per day every day even after the landlords asked him to comply. The landlords felt it was dangerous and it appeared that the more they asked, the tenant would keep them working endlessly which in some cases quadrupled the bills. The tenant forced demands on the landlords and the landlords even purchased the dishwasher to make the tenant's stay more comfortable. The tenant bullied the landlords and threatened from September till moving out that he would sue the landlords, call lawyers and every conversation was met with threats. The landlords felt their safety was jeopardized. The smoke detector is hard-wired to both units which went off which also caused the landlords to feel unsafe in their unit.

The landlord further testified that the facts contained in the tenant's Affidavit are untrue and the landlords are appalled that the tenant accuses the landlords of offending the tenant's children. The landlords never saw the children after September. Further, the rental unit was never a bed and breakfast rental as the tenant's Affidavit states, however there were short-term rentals prior.

With respect to the tenant's claim of loss of quiet enjoyment, the landlord testified that there were several emails sent to the tenant regarding what the landlords felt was unreasonable abuse by the tenant, such as banging on the dryer, extensive laundry use, over-crowding, all of which caused a hazardous place for the landlords. Further, the emails address 7 complaints from neighbours about the tenant's driving.

At one point, the tenant was determined that the landlords open up a closed-off area for the use of the tenant's daughter and bullied the landlords about it aggressively. Allegations in the tenant's Affidavit of the landlords entering into the rental unit and of going to see who was in the rental unit are false and disturbing.

The tenant testified that the contents of the Affidavit are true, which states, in part that almost immediately after moving into the rental unit the landlords monitored the tenant's use of the rental unit, including coming and going, who was in the unit, visitors and use of the laundry appliances. The tenant received over 115 emails from the landlords in 100 days complaining about numerous things. At all times during the tenancy the tenant felt that his privacy was intruded upon in an excessive and intimidating manner, and at some points the tenant felt

unsafe for himself, his children and guests. As a result, the tenant gave notice to end the tenancy on December 31, 2014 and vacated the rental unit on February 1, 2015.

The tenant incurred approximately \$121.70 per month for storage costs, \$150.00 for time off work to move and relocation transportation, but has no invoices to support those amounts.

The tenant's Affidavit also states that relocating the children has caused a huge amount of emotional stress and turmoil in their lives.

The tenant believes that the landlords' application is an attempt to renovate the rental unit at the tenant's expense because the landlords have listed the property for sale.

The tenant agrees to pay for the carpet cleaning in the amount of \$94.50, and does not object to a professional cleaning fee, however \$378.00 as claimed by the landlords amounts to \$60.00 per hour and is excessive. Upon researching, the tenant submits that \$20.00 to \$30.00 per hour is average, and the tenant agrees to pay half of the claimed amount, or \$189.00.

With respect to the landlords' claim for painting the rental unit, the tenant's Affidavit states that the walls were not in newly painted condition at move-in, had visible wear and tear, and the landlords had previously used the unit as a bed and breakfast. Providing the landlord with the full amount claimed of \$1,375.00 would result in an unjust betterment in favour of the landlords at the tenant's expense. The tenant acknowledges causing a few minor dents and scratches and agrees to \$250.00. Further, the tenant does not smoke and has never smoked in the rental unit.

Similarly, with respect to the landlords' claim for \$2,808.75 for carpets, that amount would put the landlords in a better financial position than they were at the beginning of the tenancy. The carpets showed visible wear and tear at the commencement of the tenancy and no further excessive wear and tear was caused during the tenancy.

With respect to the new lock claimed by the landlords, the tenant admits losing the key, but submits that the landlords' documentation is not proof of payment, and the amount includes a \$10.00 shipping and handling charge; the landlords could have obtained one locally.

The tenant also denies being late with rent on 2 occasions and has provided proof of an interac e-transfer on November 1, 2014. The other payment was one day late.

With respect to the landlords' claim for \$199.00 for the dryer, the tenant denies that it was in new condition at the outset of the tenancy and had visible wear and tear, stating that the landlords' advertisement to sell it specified that it was bought in 2005 making it nearly 10 years old.

With respect to the landlords' claim of \$50.00 for damage to the range and \$100.00 for the dishwasher, the tenant submits that any damage was minor scratches which are reasonable wear and tear.

The tenant also denies the landlords' claim of \$390.00 for damaged laminate, stating that the tenant did not cause the damage, and that prior to the tenancy they were not glued down properly and shifting of the boards was natural.

The tenant agrees to a total of \$544.50 being deducted from the \$700.00 security deposit and requests the remainder be returned to the tenant.

The tenant claims \$3,000.00 in damages for loss of quiet enjoyment of the rental unit, physical inconvenience and humiliation, and mental distress caused by the landlords.

Aside from the Affidavit, the tenant also testified during cross examination. He stated that all damages at move-in were recorded on the move-in condition inspection report which was signed by the tenant.

The tenant also testified that he received over 115 emails from the landlords in approximately 100 days, being more than 1 per day, a fraction of which dealt with late rent, the bed payment and hydro usage. The laundry appliances were old and it took longer to dry a load, and with 3 children there half-time there was a lot of laundry, but 11 hours per day is absurd. The parties also had a conversation about the laundry and the tenant agreed to reduce the number of days. The parties also had a conversation wherein the tenant agreed that if his children were there for more than half the time the tenant would pay more toward utilities, but they were there less than half the time.

The tenant does not agree that there were extensive damages left at the rental unit at the end of the tenancy and testified that the landlords' camera stopped working during the move-out condition inspection.

With respect to the beds, the tenant testified that the parties had a verbal agreement for rental of them during the tenancy, and the tenant paid \$217.00. The mattresses were not new at the beginning of the tenancy. They may have been packed up but were not new and not in the original wrapper when they were shown to the tenant and there were no tags. They were lying on bed frames all set up, and the tenant was not interested in keeping them. The tenant also denies agreeing to purchase the beds, and claims that the clause in the tenancy agreement is uncertain, vague, and ambiguous.

The parties were also provided with an opportunity to give closing submissions, and the tenant's counsel has also provided a few cases respecting the tenant's claim for damages and submits that the \$3,000.00 claim is well within the range in the circumstances.

The landlord submitted that the evidence shows that the tenant received at least a dozen emails about pleading for compliance to not leave the dryer on, other issues, and the fire alarm went off a dozen times resulting in that many more emails. It wasn't that the landlords randomly sent over 100 emails; each concern was a continuous plea for compliance.

Analysis

I have reviewed the extensive material provided by the parties.

Dealing firstly with the landlords' application for late fees, the regulations to the *Residential Tenancy Act* provides that a landlord may charge a late fee of no more than \$25.00 per month if a clause is contained in the tenancy agreement. There is such a clause, however the tenant has provided proof of one of those payments being made on the first day of the month. I find that the landlords are entitled to \$25.00 for one late rent payment.

With respect to the landlords' claim for the mattresses, the landlord referred to page 19 of the evidence package, a portion of the tenancy agreement which states that the tenant has not verified that he wishes to purchase them, and if the tenant terminates prior to the end of the tenancy, the beds are to be paid in full and become contents owned by the tenant, otherwise they will become the property owned by the landlord without refund. Also, at page 22 that the tenant agrees to lease them for \$30.00 monthly when the rental payment is made, and that the tenant may opt to purchase them at the termination of the lease for \$900.00 minus any payments made. I find that there is nothing in the tenancy agreement requiring the tenant to purchase the beds, and the landlords' application for \$773.00 is dismissed.

With respect to the landlords' claim for a monetary order for unpaid utilities, the tenancy agreement includes utilities. The landlord testified that the bills increased substantially and that the home was flagged by the electric company. The landlord also testified that the \$125.00 claim for the fireplace in December, 2014 was calculated based on the average consumption of such a unit but has no idea when it arrived. The landlord also testified that the heat for the rental unit is controlled by the landlords in another unit and they kept the heat at 69 degrees. Heat is included in the rent, electrical usage is bound to increase in the winter months, and I find that the landlords have failed to establish that the increase in the bills is entirely attributed to the fireplace. The landlords' claim for \$125.00 for the fireplace usage is dismissed. Similarly, I do not accept that the landlords' estimate of over-usage of utilities by the tenant and guests for less than a week over the Christmas holidays has been established, and I dismiss that portion of the landlords' application.

The *Residential Tenancy Act* does not permit claims for the cost of preparation for a dispute resolution hearing, only for recovery of the filing fee. Therefore, the landlords' claims for \$630.00 for preparation for this hearing and \$21.27 for the cost of photographs are dismissed.

With respect to the landlords' application for damage to the unit, site or property, in order to be successful, the onus is on the landlords to establish the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and

4. What efforts the landlords made to mitigate, or reduce the damage or loss suffered.

The *Act* states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy however numerous markings on the move-in condition inspection report are not readable, and no move-out condition inspection report has been provided. The landlords have provided one for December, 2014 and photographs of the January 31, 2015 inspection.

The tenant does not dispute the landlords' claim for \$94.50 for carpet cleaning.

I have reviewed the invoice for cleaning the rental unit and note that it includes an overall deep clean. The tenant is not responsible for a pristine condition that a landlord may want for future tenancies or prospective sale; that is a landlord's responsibility. A tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear. The tenant denies \$378.00 but agrees to half that amount, or \$189.00 for cleaning the rental unit, stating that if he had known the landlords would charge that amount, the tenant would have hired someone himself and that upon researching, the tenant has learned that half the amount is the normal charge. It's not clear how many people cleaned the rental unit, perhaps it was 2 cleaners for 6 hours at \$30.00 each; the invoice does not specify. However, I have reviewed the photographs and I find that the tenant did not leave the rental unit reasonably clean and the landlords have established the claim of \$378.00.

With respect to carpet and laminate replacement, the landlord testified that the carpet could not be cleaned, and that the landlord owns a flooring company. Any award for damages must not put the landlords in a better financial position than they would have been prior to the tenancy. In other words, a landlord cannot claim the full replacement costs of carpeting for carpet that was 10 years old, for example. I refer the parties to Residential Tenancy Branch Policy Guideline 40 – Useful Life of Building Elements. The landlords have provided no evidence of the age the carpets or the laminate, and I am not satisfied that the tenant is responsible for their replacement.

With respect to the landlords' claim for painting the rental unit, I have reviewed the move-in condition inspection report and the photographs, and I am satisfied that the tenant caused some of the damage, but not to the entire rental unit. The tenant has agreed to pay \$250.00, and I find that amount to be reasonable.

With respect to the lock replacement, the tenant admits to losing the key but denies the total cost. I have reviewed the invoice and note that it was paid for by PayPal, and if a landlord chooses to have it delivered, I am not satisfied the tenant is responsible for payment of that cost. I find that the tenant is liable for the cost of the lock and taxes in the amount of \$33.53.

With respect to the landlords' claim for the damaged dryer, range and dishwasher, I am not satisfied that the landlords have established that any damage was beyond normal wear and tear or that element 4 in the test for damages has been satisfied.

Once a landlord and a tenant enter into a tenancy agreement the landlord is obligated to provide the tenant with use of the rental unit free from unreasonable disturbance. In this case, the tenancy lasted 3 ½ months during which the landlords sent to the tenant more than 100 emails, which I find is extreme. However, I also consider the testimony of the landlords about repeated safety violations, unreasonable behaviour regarding laundry appliances, forcing demands on the landlords, unreasonable abuse by the tenant, banging on the dryer, threatening law suites, and numerous other issues. The landlord also testified that allegations in the tenant's Affidavit about the landlords entering into the rental unit and of going to see who was in the rental unit are false and disturbing.

Although a tenant is entitled to quiet enjoyment of a rental unit, a tenant cannot cause disturbances or ignore rules and then attempt to obtain aggravated damages for loss of quiet enjoyment. In the circumstances, I am not satisfied that the tenant has established that he did anything to mitigate any damages suffered, and the tenant's application is hereby dismissed.

In summary, I find that the landlords have established a monetary claim as against the tenant for late fees of \$25.00, carpet cleaning for \$94.50, cleaning the rental unit for \$378.00, \$250.00 for painting, and \$33.53 for the lock replacement, for a total of \$781.03. Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee.

The landlords currently hold a security deposit from the tenant in the amount of \$700.00 and I order the landlord to keep it in partial satisfaction, and I grant a monetary order in favour of the landlords for the difference in the amount of \$131.03.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby order the landlords to keep the \$700.00 security deposit and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$131.03.

This order is final and binding and may be enforced.

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 29, 2015

Residential Tenancy Branch

