



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for landlords use of the property; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on May 08, 2015. The completed package was sent again with the amended application on May 27, 2015. Canada Post tracking numbers were provided by the landlords in verbal testimony. Canada Post tracking information shows the female tenant signed for the second package on June 03, 2015. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

At the outset of the hearing the landlords advised that the tenants are no longer residing in the rental unit, and therefore, the landlords withdraw the application for an Order of Possession.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to an Order permitting the landlords to keep all or part of the security deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

NL testified that this tenancy started on January 01, 2014 for a fixed term of a year. The tenancy ended on May 10, 2015. Rent for this unit and the cottage was \$1,800.00 per month due on the first day of each month in advance. The tenants paid a security deposit of \$900.00 on January 01, 2014.

NL testified that the tenants were served a Two Month Notice to End Tenancy for landlords' use of the property (the Notice) on February 16, 2015. The Notice informed the tenants that the landlords had all the necessary permits and approvals in place to demolish or renovate the rental unit in a manner that requires the rental unit to be vacant. The Notice had an effective date of April 30, 2015. The tenants did not vacate by this date and overheld at the rental unit until May 10, 2015. NL testified that they went to do the move out inspection with the tenants on May 10, 2015 but there was an altercation with the tenants and the landlords had to call the police because the male tenant assaulted FL by knocking her camera out of her hand with a broom handle. The Police advised the landlords to leave the premises and to return the next day to do the inspection. The landlords returned the next morning; however, the tenants did not return to do the inspection and the landlords completed the inspection in the tenants' absence. A copy of the inspection reports have been provided in documentary evidence.

NL testified that they found the tenants had left the carpets in a stained and dirty condition. One bedroom carpet had a stain at the start of the tenancy. The landlords had to have the carpets professionally cleaned but due to the condition they were left in they will need to be replaced. The carpet cleaner charged the landlords \$597.50; however, the landlords seek to recover

\$390.00 from the tenants. The carpet cleaning invoice has been provided in documentary evidence.

NL testified that the tenants turned off the heat in the cottage and this caused a pipe to freeze and split. The tenants must have turned off the water to the cottage to hide this fact as they did not report the split pipe to the landlords. The landlord turned on the water and discovered the split pipe. The landlords had a plumber attend and make the repairs to the pipe. The landlords seek to recover \$120.75 for this work and have provided a copy of the invoice in documentary evidence.

NL testified that the tenants were responsible for unplugging any blockages in the toilet, sink or drains as documented under the tenancy agreement. The drains all ran freely at the start of the tenancy; however, there was a blockage found in the drain in the side cottage. The plumber attended and had to clear the blockage which consisted of a Brillo pad, grease and debris. The landlords seek to recover the cost for this work of \$208.22 and have provided the invoice in documentary evidence.

NL testified that they had been parking their RV on a site that they paid \$57.75 a month for. The landlords had intended to bring the RV to the rental unit to park it there on May 01, 2015; however, as the tenants had not vacated the rental unit on May 01, 2015 the landlords could not bring their RV. They had paid in advance for eight months and could not recover the cost for parking for May and therefore seek to recover this from the tenants. A copy of the parking receipt has been provided in documentary evidence.

NL testified that the tenants had verbally agreed to maintain the hot tub if the landlords had it turned back on. The landlords activated the hot tub and paid a total of \$262.50. The landlords seek to recover part of this cost for the tenants share to fill and put chemicals into the water to balance the hot tub as agreed. The landlords therefore seek to recover \$50.00 from the tenants for their share of the invoice. A copy of the invoice has been provided in documentary evidence.

NL testified that the tenants' rent check for September, 2014 was returned due to insufficient funds. NL referred to clause 55 of the tenancy agreement which states that a tenant will be charged a fee of \$25.00 for the return of a cheque from their financial institution. The landlords

have provided a copy of the dishonored cheque in documentary evidence and seek to recover \$25.00.

NL testified that as they live 30 miles away from the rental unit they had to make many trips to and from the unit. Due to this the landlord incurred costs for their gas of \$113.00. The landlords seek to recover this cost from the tenants and have provided a gas receipt in documentary evidence.

NL testified that they had claimed for a loss of rent for May and June, 2015; however, as the tenants vacated the rental unit on May 10, 2015 the landlord agreed to reduce their claim to the overholding days in May, 2015 of \$580.64.

The landlords seek an Order to be permitted to keep the security deposit to offset against their monetary claim and to recover the filing fee of \$50.00.

Analysis

The tenants did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords' documentary evidence and sworn testimony before me.

I have applied a test used for damage or loss claims to determine if the claimants have met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimants to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondents. Once that has been established, the claimants must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimants did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I will address the landlords' claim for money owed or compensation for damage or loss. With regard to the claim to recover some of the carpet cleaning costs; I am satisfied from the undisputed evidence before me including the photographic evidence and the evidence of the inspection reports that the tenants did leave the carpets in the rental unit stained and dirty. There was one stain on the bedroom carpet at the start of the tenancy; however, the carpets have clearly not been cleaned during the tenancy or at the end of the tenancy as required. Consequently, I find the landlords are entitled to recover the carpet cleaning costs as claimed of **\$390.00**.

With regard to the landlords' claim for the split pipe; the tenancy agreement clause 29 stipulates that the tenant will promptly notify the landlord of any damage, or situation that may significantly interfere with the normal use of the property or to any furnishings of the landlord. NL testified that the tenants had not informed them that the pipe had split and the water had to be turned off. The landlords had to have this repaired and found it was caused from freezing. Tenants are required to ensure sufficient heat is on in a property they rent to prevent damage to pipes from freezing. As the tenants have not appeared to dispute the landlords' claims that they are not responsible for the pipes freezing then I find in favor of the landlords' claim to recover the repair costs of **\$120.75**.

With regard to the landlords' claim to recover the costs to unblock the pipe; the tenancy agreement clause 14(c) stipulates that the tenants are responsible to unplug blocked sinks, toilets or drains. The drain was blocked by a Brillo pad, grease and general debris. This had not been unplugged by the tenants and therefore I find in favor of the landlords undisputed evidence that the tenants are responsible for this blockage. I therefore uphold the landlords' claim to recover the repair costs of **\$208.22**.

With regard to the landlords' claim to recover the costs to park their RV for the month of May; the landlord has provided a receipt for the parking costs for their RV. This receipt shows that \$173.25 was paid on September 27, 2014. The receipt also documents that one @ \$173.25 and five @ 57.75. The landlords claim that as they had already paid for the month of May they could not recover this. I am not satisfied that if the landlords had previously paid for the month of May and this amount is not recoverable, that they can hold the tenants responsible to pay for the landlords RV parking for May because the tenants overheld at the rental unit. This section of the landlords' claim to recover \$57.75 is therefore dismissed.

With regard to the landlords' claim to recover \$50.00 towards the hot tub costs; there is no mention of the hot tub in the tenancy agreement or the tenants' responsibility to pay to maintain the hot tub; however, if the tenants had the use of the hot tub they should be responsible for the cleanliness of the hot tub and any chemicals used to balance the water. I find the landlords' claim of **\$50.00** for the initial fill and balancing to be reasonable and I therefore uphold the landlords' claim to recover this amount from the tenants.

With regard to the landlords' claim to recover \$25.00 for a returned rent cheque for September, 2014; I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there clause 55 in the agreement that provides for fee of \$25.00 for the return of a tenants' cheque. Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlords are entitled to recover **\$25.00** for this NSF cheque.

With regard to the landlords' claim to recover the cost of gas to get to and from the rental unit from their home in the nearby town; there is no provision under the *Act* for the landlords travel

costs to be awarded and this is deemed to be the cost of doing business as a landlord. This section of the landlords' claim is therefore dismissed.

With regard to the landlords' claim to recover rent for May, 2015; when a landlord serves a tenant with a two Month Notice to End Tenancy for landlords use of the property and the tenants do not vacate the unit by the effective date given on the Notice the tenants are deemed to have over held at the rental unit and as such the landlords are entitled to recover rent for each day the tenants remain at the rental unit. NL testified that the tenants did not vacate until May 10, 2015. I am therefore satisfied with the landlords undisputed testimony and reduced claim and find the landlords are entitled to recover 10 days of rent for May to the amount of **\$580.64**.

I Order the landlords to keep the tenants' security deposit of **\$900.00** in partial satisfaction of their claim pursuant to s. 38(4)(b) of the *Act*. This amount has been offset against the landlords' monetary award.

As the landlords' claim has merit I find the landlords are entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords as follows:

Carpet cleaning	\$390.00
Split pipe repair	\$120.75
Blocked drain	\$208.22
Hot tub maintenance	\$50.00
NSF fee	\$25.00
Rent for May	\$580.64
Subtotal	\$1374.61
Filing fee	\$50.00
Less security deposit	(-\$900.00)
Total amount due to the landlords	\$524.61

Conclusion

For the reasons set out above, I grant the landlords a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$524.61**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

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 17, 2015

Residential Tenancy Branch

