



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This reconvened hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the *Act*"). The landlords applied for:

- a monetary order for damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties acknowledge receipt of the other party's evidentiary materials for this hearing.

Preliminary Issue

At the outset of this reconvened hearing, the tenants renewed their objection to the adjournment of the previous hearing in this matter. At that time, the landlord sought an adjournment because she had only recently (within the previous day) given birth. The tenants requested that I require the landlord to produce evidence of the birth of her child. Their objection was noted and their request was denied.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for damage or losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit towards any monetary award? Are the landlords entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to a monetary award for damage or loss arising out of this tenancy? Are the tenants entitled to return of their security deposit? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

On May 1, 2015, both parties attended a teleconference hearing scheduled for this matter. At that time, the hearing was adjourned on the application of the landlord. At this hearing, the landlord's application for a monetary order in the amount of \$989.48 was considered as was the tenant's application for return of their security deposit and other money owed in compensation for loss as a result of the tenancy for a total of \$2739.15.

This tenancy began on February 1, 2014 with a rental amount of \$650.00 payable on the first of each month. The landlord testified that a 2 Month Notice was served by hand to the tenants on December 27, 2014 to be effective February 28, 2015. The grounds provided by the landlords for the 2 Month Notice were that the "rental unit will be occupied by the landlord or the landlords spouse or a close family member ... of the landlord or the landlords' spouse". Both parties agreed the tenants vacated the rental unit on December 30, 2014. Both parties agreed that the tenants did not take all of their belongings with them. The landlord testified that a large amount of items belonging to the tenants remained on the property after they vacated the rental unit and that she stored them away in accordance with the requirements of the *Residential Tenancy Act*.

The landlords testified that this rental unit was left very dirty. The landlord testified that;

- the windows were not washed;
- the cupboards were not wiped out;
- the toilet and sink were dirty;
- there were flies in the light fixtures;
- the baseboards were dirty;
- there were an excessive amount of nail holes in the walls; and
- the bathroom was mouldy.

The agent for Tenant JR submitted that no receipts were provided to the tenants at any time before or after the end of their tenancy. He also submitted that no receipts were submitted for this hearing to provide evidence of a cost to clean the rental unit. The landlord testified that “some kids from manpower” did the clean-up work and that’s why there is no receipt. He submitted that any damage was normal wear and tear. He submitted that there was mould in the unit that resulted in both tenants being sick. He also submitted that the heat bills during the course of the tenancy were extremely high because of the lack of insulation in the unit.

Tenant KC testified that this property is an average house although in a somewhat remote location. The landlord testified that the property was essentially a rustic cottage. The tenant also testified that the rental unit was cold. She testified that the most difficult part of the tenancy was mould within the rental unit. She testified that she attempted to clean but also purchased mould tester and took picture that she submitted. Tenant KC’s testimony was that eventually the tenants moved out because of the mould and did not return to clean for the same reason.

The condition inspection paperwork submitted by the landlord consisted of a home-made report. Comments on the condition of the unit at the end of tenancy, written by the landlord include references to screw or nail holes; dust; mold; and minor damage or unwashed areas with notes including, “could have used a wipe”. Within the report and at the end of the report, the writer makes a variety of references to mold or mildew. Within the living room section, the writer notes that there is some mold or mildew. One section for “window tracks’ indicates mildew or mold. Walls and windows are described as having mold or mildew. At the end of the report, the writer states, “some surface mold mildew. Therefore tenants did not clean windows or other surfaces. They deemed ‘unsafe’” and “bleach removed the wall mold with a good scrubbing & rinsing.”

The landlords testified that, as a result of the manner in which the tenants used the heat in the residence, there was damage to the pipes within the rental unit property. The landlords did not submit receipts, invoices, or estimates for any work required but testified to the difficulties of burst pipes as well as to the fact that the unit had minor floods over the course of the tenancy. While the landlords testified that these floods were as a result of actions by the tenants, the tenants testified that the floods were as a result of the conditions within the rental premises. The landlords submitted digital evidence that illustrated the condition of the rental unit at move-out.

Tenant JR submitted that the landlords have provided minimal evidence of any significant damage that has resulted in any cost. He testified that the rental unit had

mold and mildew because of its poor conditions and the tenants were both sick as a result of those conditions. He submitted that they could not return to clean the property.

Within the condition inspection report, there were no notations made at the time with respect to any deductions from the security deposit. Also, at the end of the report, landlord wrote that the tenants claimed it was “unsafe” to clean in the residence.

The tenant submitted that there was “no tenant responsibility” for damage on the report; the pet deposit had been returned prior to the condition inspection and the landlords had been in the rental unit numerous times prior to the end of the tenancy.

The tenant also submitted that they incurred a loss as a result of this tenancy in that items in their home could not be taken from the residence to any new home. Tenant KC testified that mattresses and other items had suffered from damage as a result of the mold in the unit and had to be replaced. The tenants submitted estimates of the cost to replace items they felt had been damaged but had made no purchases and submitted no receipts. The tenants testified that these items were not salvageable however the tenants provided grainy photographs that did not show clearly irreparable damage to their possessions.

Analysis

If the landlord is making a claim against the security deposit, they must complete the reports in accordance with the *Act*. When there is a dispute with respect to damage to the rental unit at the end of a tenancy, the best evidence available is the move-in and move-out condition inspection reports. Based on the condition inspection reports submitted into evidence, there is no indication that any agreement was made between the parties for a deduction in the tenant’s security deposit. While the landlord made a note of some minor damage or unclean parts of the rental unit, she made no written mention of a deduction.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant’s forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. In this case, the tenants vacated the rental unit on December 31, 2014 (or slightly before). The landlord returned the tenants pet damage deposit and filed to retain the tenants’ security deposit within 15 days of the tenants vacating the rental unit.

The landlord seeks to retain the security deposit in partial satisfaction of their claim for damage to the rental unit and their losses in that they claim they were forced to clean and repair the unit. The evidence of the tenant and the landlord is contradictory with respect to the condition of the rental unit. I accept the testimony of the tenants regarding the condition of the unit at move-out. I rely on the evidence presented in the form of the condition inspection report, as the best evidence under the Act. I find that the landlords' evidence of damage or uncleanliness was insufficient to meet the burden of proof in seeking a monetary award. I find that the evidence submitted including digital photographs does not support a claim of unreasonable damage or damage beyond normal wear and tear. I find that, based on the testimony of the tenants and in consideration of all of the evidence submitted, I find that the tenants made sufficient efforts to clean the residence and that it appeared, from photographic evidence and documentary evidence of steps taken to clean the rental unit, that the condition of the residence at the end of tenancy was tidy and any damage was as a result of reasonable and normal wear and tear. I therefore find that the landlords are not entitled to recover their costs in repairing and cleaning the rental unit to their standard. I find that the landlords are applying a standard to the tenants' clean up on the rental unit that is a personal standard, not reflective of the standard applicable under the Act and according to the Residential Tenancy Policy Guidelines. I find the tenants are entitled to the return of their security deposit.

I note that the tenants have made a claim for compensation based on the fact that some items within the rental unit acquired a level of mold. The tenants did not provide sufficient documentation of their claim. While they supplied testimony with respect to the fact that there was mold in the residence, there was no evidence that showed on a balance of probabilities that the landlord was somehow responsible or negligent in addressing the mold. Furthermore, the tenants produced online estimates for the cost of new items, for example mattresses, but provided little to no evidence to show that the mattresses required replacing. The tenants did not produce any evidence of the original cost or age of the mattresses or other items within the residence. For these reasons, I find the tenant is not entitled to recover the cost of any lost items within the residence.

As for the tenants' claim for relocation costs and temporary housing, I find that the tenants provided insufficient evidence that they were required to move and that the move was the responsibility or as a result of the negligence of the landlords. I dismiss the tenants' application for a monetary award for loss as a result of this tenancy.

The tenants were successful in recovery of their filing fee and so therefore, I find further that the tenants are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I dismiss without leave to reapply the landlord's application for a monetary order for lack of sufficient evidence.

I order the landlord return the \$325.00 security deposit to the tenants. In order to give effect to this order, I issue a monetary order in the amount of \$ in favour of the tenants as follows;

Item	Amount
Return of Security Deposit	\$325.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$375.00

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as 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: July 14, 2015

Residential Tenancy Branch

