



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNDC, MNSD, FF
MNSD, RR

Introduction

This hearing concerns 2 applications:

- i) by the landlords for a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of all or part of the security deposit / and recovery of the filing fee; and
- ii) by the tenants for a monetary order as compensation reflecting return of all or part of the security deposit / and a reduction in rent for repairs, services or facilities agreed upon but not provided.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the tenancy began on February 01, 2013. Monthly rent of \$1,500.00 was due and payable in advance on the first day of each month, and a security deposit of \$750.00 was collected. A move-in condition inspection report was not completed.

By email dated September 30, 2014, the tenants gave notice to end tenancy effective October 31, 2014. While the parties exchanged text messages in regard to meeting at the unit in order to do a move-out condition inspection, such a meeting never took place, and neither was a move-out condition inspection report completed.

By email dated November 01, 2014, the tenants provided the landlords with their forwarding address. In this email the tenants also consented to the landlords' withholding of \$421.00 from the security deposit for the combined hydro / gas utility.

The landlords filed their application for dispute resolution on November 13, 2014, and the tenants subsequently filed their application on June 04, 2015.

Analysis

At the outset, the particular attention of the parties is drawn to the following legislation:

ACT

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

REGULATION

Part 3 – Condition Inspections (sections 14 to 21)

Based on the testimony and the documentary evidence which includes, but is not limited to, numerous emails exchanged between the parties and photographs, in addition to consideration of certain statutory provisions and Residential Tenancy Policy Guidelines, the various aspects of the respective applications and my findings are set out below.

LANDLORDS

\$421.00: *hydro / gas utilities*

As noted above, the tenants consented to the landlords' withholding of this amount from the security deposit pursuant to their email to the landlords of November 01, 2014. During the hearing the tenants reconfirmed their consent. Accordingly, I find that the landlords have established entitlement to the amount claimed.

\$800.44: *(\$650.44 + \$150.00) replacement cost of stove + related time*

During the tenants' use of the stove, the oven door became dislodged, apparently as a result of some problem(s) with the hinge(s). Attempts by the tenants to remedy this included a blow to the door which resulted in shattering of the glass on the oven door. The landlords determined that replacement of the entire stove was more practical and cost effective than replacing the oven door. The tenants do not deny responsibility for shattering the glass, but argue that damage was indirectly the result of a faulty hinge.

Residential Tenancy Policy Guideline # 40 speaks to the "Useful Life of Work Done or Thing Purchased," and provides that the useful life of a stove is 15 years. During the hearing the landlords estimated that by the time tenancy ended, the stove was approximately 7 years old.

I find that the tenants ought not to be found responsible for the cost of replacing the entire stove, as the oven door itself could have been replaced. In consideration of the age of the stove and the absence of a record of the stove's condition on a move-in condition inspection report, on balance, I find that the landlords have established entitlement to compensation, including related time, limited to **\$250.00**.

\$100.00: *storage*

While this cost has not actually been incurred by the landlords, the claim reflects what the landlords consider is a reasonable fee to assess for the tenants' use of a portion of the garage for storage. I find that this aspect of the claim is a reflection of animosity that began to develop between the parties several months after the start of tenancy. Further, I find there is no evidence of a conversation between the parties either at the start of tenancy or later during the tenancy, in relation to the assessment of such a fee. In the result, this aspect of the application is hereby dismissed.

\$200.00: *cleaning of unit*

Section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,

The tenants testified that at the end of tenancy they cleaned the unit to a standard which they considered to be reasonable. In the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the application must be dismissed.

\$450.00: *yard work / feces cleaning*

The "Addendum To Lease" provides in part:

12. The Tenant(s) shall be responsible for regular yard maintenance and upkeep to the property at which the Residential Premises are located.

13. The Tenant(s) shall be responsible for the collection and disposal of any animal and pet waste on the property at which the Residential Premises are located.

Residential Tenancy Policy Guideline # 1 speaks to "Landlord & Tenant – Responsibility for Residential Premises," and provides in part:

PROPERTY MAINTENANCE

3. Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

GARBAGE REMOVAL AND PET WASTE

Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

I find on a balance of probabilities that the landlords have established a measure of entitlement in this aspect of the application. However, in consideration of the standard of what is “reasonable,” and in the absence of the comparative results of move-in and move-out condition inspection reports, I find that this entitlement is limited to **\$100.00**.

\$635.20: cost of paint and labour for painting

Residential Tenancy Policy Guideline # 1 speaks to “Landlord & Tenant – Responsibility for Residential Premises,” and under the heading, RENOVATIONS AND CHANGES TO RENTAL UNIT, provides as follows:

1. Any changes to the rental unit and / or residential property not explicitly consented to by the landlord must be returned to the original condition.
2. If the tenant does not return the rental unit and / or residential property to its original condition before vacating, the landlord may return the rental unit and / or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

This aspect of the claim concerns 2 particular areas within the unit, 1 bedroom and the living room / dining room.

The tenants painted 1 bedroom in relatively dark colour(s) and failed to return the bedroom to its original colour(s) by the time tenancy ended. The landlords claim that they were “not informed that this bedroom was modified in this manner.” Repainting was undertaken by the landlords following the end of tenancy.

The tenants painted a portion of the living room / dining room with the landlord's approval, but apparently neglected to paint the "difficult to reach" areas over the staircase. This was remedied by the landlords following the end of tenancy.

I find that the landlords have established entitlement to **\$350.00**, which is comprised of \$150.00 allowed for paint / related supplies, and \$200.00 allowed for labour.

\$200.00: *garage cleanup*

In the absence of the comparative results of move-in and move-out condition inspection reports, this aspect of the application is hereby dismissed.

\$50.00: *filing fee*

As the landlords have achieved a measure of success with the main aspects of their application, I find that they have also established entitlement to recovery of the filing fee.

Total entitlement: \$1,171.00 (\$421.00 + \$250.00 + \$100.00 + \$350.00 + \$50.00)

TENANTS

\$750.00: *return of all or part of the security deposit / reduction in rent for repairs, services or facilities agreed upon but not provided*

As previously noted, the tenants authorized the landlords to withhold **\$421.00** from the security deposit for certain utilities, leaving a balance remaining of \$329.00. While the tenants have also specifically applied for compensation reflecting a reduction in rent for repairs, services or facilities agreed upon but not provided, additionally in the narrative of their application they have alleged a "loss of quiet enjoyment." I must conclude that these aspects of the claim are rolled into the amount of \$750.00.

Miscellaneous concerns identified include the following:

- move-in garbage removal and clean up
- bedroom ceiling mold and dampness
- deck stairs
- smoking
- washing machine
- leaking fireplace rock-wall face
- garbage on lawn and driveway

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain, in part:**

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I find that the tenants have failed to meet the burden of proving that the unit failed to comply with the “health, safety and housing standards required by law,” or that it was not “suitable for occupation.” I also note that the parties were in contact around some of the above concerns. While the tenants may have felt dissatisfied with the time taken by the landlords to respond, or considered that the response was otherwise inadequate, there is no evidence that they clearly communicated such sentiments to the landlords during the tenancy. Neither is there any evidence that the tenants sought to remedy these concerns by contacting the Residential Tenancy Branch during the tenancy.

Section 28 of the Act addresses **Protection of tenant’s right to quiet enjoyment:**

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord’s right to enter the rental unit in accordance with section 29 [*landlord’s right to enter rental unit restricted*];

Further, Residential Tenancy Policy Guideline # 6 speaks to “Right to Quiet Enjoyment.”

I find that this aspect of the claim reflects the mutual animosity that gradually developed between the parties. On balance, however, I find that none of the alleged breaches of the right to quiet enjoyment meet the test of “unreasonable” or “significant.” In the result, I find that this aspect of the application must be dismissed.

\$50.00: *filing fee*

While there was some mention during the hearing around whether the tenants sought to recover the filing fee for their application, I note that the application for dispute resolution which was filed online does not include specific application to recover the filing fee. Further, there is no

evidence that the tenants amended their original application to include application to recover the filing fee.

Total entitlement: \$00.00 (disposition of the full amount of the security deposit is addressed above under LANDLORDS).

Offsetting the respective claims, I find that the landlords have established a claim of **\$1,171.00**. I order that the landlords retain the security deposit of **\$750.00**, and I grant the landlords a **monetary order** for the balance owed of **\$421.00** (\$1,171.00 - \$750.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$421.00**. Should it be necessary, this order may be served on the tenants, filed in the Supreme 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: July 16, 2015

Residential Tenancy Branch

