



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenants did not appear at the hearing. The landlord testified that the hearing documents were sent to each tenant via registered mail on December 19, 2014. The registered mail was returned as unclaimed. The landlord provided a copy of each registered mail envelope, including tracking numbers, as proof of service. As for the address used to send the registered mail, the landlord submitted that the tenants provided a forwarding address when the tenancy formed, as seen in clause 16 of the tenancy agreement, and that at the end of the tenancy the tenants orally confirmed that they were moving back to that address.

Section 89(1) provides that registered mail is a permissible method to serve the respondent with an Application for Dispute Resolution. Where a landlord serves a tenant the landlord is to use the forwarding address provided by the tenant or the tenant's address of residence at the time of mailing. Upon consideration of the evidence before me, I am satisfied that the landlords sent the hearing packages to the tenants via registered mail using their forwarding address and/or address of residence at the time of mailing.

Section 90 of the Act deems a person to have received documents five days after mailing even if the party refuses to accept or pick up their mail so that a party cannot avoid service.

In light of the above, I found the tenants to be deemed in receipt of the landlord's hearing packages and I continued to hear from the landlord without the tenants present.

Issue(s) to be Decided

1. Have the landlords established an entitlement to recover the amounts claimed against the tenants?
2. Are the landlords authorized to retain the tenants' security deposit?

Background and Evidence

The tenancy commenced August 15, 2013 and the tenants paid a security deposit of \$675.00. The tenants were required to pay rent of \$1350.00 on the 1st day of every month and the tenants were required to pay for most utilities including heating oil. The tenants vacated the rental unit on August 23, 2014.

Below, I have summarized the landlord's claims against the tenants.

Furnace heating oil

The landlord pointed to clause 22 in the tenancy agreement that provides that the tenants are responsible for heating oil. The clause also indicates that the tenants were provided a full tank of oil at the beginning of the tenancy and would be required to leave it full at the end of the tenancy.

The landlord testified that the tenants left the oil tank was empty at the end of the tenancy and the pilot light in the furnace had gone out. The landlord had the tank filled on September 24, 2014 at a cost of \$1,467.29. The landlords seek recovery of this amount from the tenants.

Re-starting of furnace

The landlords submitted that because the tenants let the oil run out in the oil tank the pilot light went out in the furnace and the landlord had to have the furnace re-started.

The landlords provided a copy of an invoice from a heating company dated September 26, 2014 in the amount of \$178.45. The invoice indicates the heating company provided a variety of services for that amount including an inspection of the furnace, replacing a pump strainer and gasket, replacing the ignition, installing an air filter, increasing the fan speed and cleaning a coil.

The landlord submitted that the heating company re-started the furnace as part of their services and upon calling the heating company the landlord determined that the cost to just re-start the furnace is \$65.00 plus tax, or \$68.25. The landlords seek compensating of \$68.25 from the tenants for re-starting the furnace.

Cleaning costs

The landlord submitted that the tenants did not leave the rental unit reasonably clean. New tenants moved into the rental unit and the landlord compensated the incoming tenants \$60.00 to clean the unit. As evidence of this expense the landlords provided a copy of their banking records to show that the new tenants withheld \$60.00 from their October 2014 rent. The landlords seek to recover their loss of \$60.00 from the tenants.

Pest control

The landlord submitted that the tenants had complained of mice during their tenancy. The landlord testified that the landlords offered to bring in pest control services or the tenants could trap mice themselves. The tenants opted to trap the mice themselves.

At the end of the tenancy the landlords discovered that the mice problem had not been resolved. The landlords hired a man to trap and remove mice at a cost of \$120.00 that they paid on September 28, 2014. The landlords seek to recover the cost of ridding the property of mice from the tenants.

Security deposit

The landlords seek to retain the tenants' security deposit in partial satisfaction of the amounts claimed.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything before me, I provide the following findings and reasons.

Heating oil

Upon review of the tenancy agreement, I find that it is clear that the tenants are responsible for paying for heating oil that they consume during their tenancy. I also accept the undisputed evidence before me that the oil tank was full at the beginning of the tenancy and empty at the end and that the landlords paid \$1,467.29 to have it refilled after the tenancy ended. I find the tenants responsible for this cost under the terms of their tenancy agreement. Therefore, I award the landlords \$1,467.29 for heating oil.

Re-starting of furnace

I accept the landlord's submission that the pilot light in the furnace went out because the tenants let the oil tank run dry; however, I find I am unsatisfied that the landlords suffered a loss as a result. I make this finding upon review of the heating company invoice and I note that there is no indication the landlords were charged for re-starting of the furnace. Rather, it would appear to me that the furnace was in need of servicing, which is a landlord's obligation to perform at regular intervals, and the cost of \$178.45 was for the servicing and maintenance which likely including re-starting of the furnace at no extra charge. Therefore, I deny the landlord's request to recover \$68.25 from the tenants for re-starting the furnace as I am not satisfied they incurred such a loss.

Cleaning

Under the Act, a tenant is required to leave a rental unit reasonably clean at the end of the tenancy. I accept the undisputed testimony and documentary evidence that the landlords compensated the incoming tenants \$60.00 because the tenants failed to leave the rental unit sufficiently clean. Therefore, I award the landlords \$60.00 for cleaning.

Pest control

I deny the landlords' request to recover pest control costs from the tenants. Generally, a landlord is responsible for ridding a property of pests. Further, the landlord testified that when the tenants notified the landlords about mice at the property the landlords

offered to bring in pest control services but the tenants opted to trap the mice themselves. As such, the landlords would have paid for pest control services at that time if the tenants had not agreed to set traps. Thus, I find the landlords did not establish that they suffered any greater of a loss because they ended up paying for pest control after the tenancy ended.

Filing fee, security deposit and Monetary Order

AS the landlords were successful in establishing an entitlement to compensation for a large portion of their claim, I award the landlords recovery of the \$50.00 filing fee paid for their application.

I authorize the landlords to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlords by way of this decision.

In light of all of the above, I provide the landlords with a Monetary Order calculated as follows:

Heating oil	\$1,467.29
Cleaning	60.00
Filing fee	50.00
Less: security deposit	<u>(675.00)</u>
Monetary Order	\$ 902.29

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlords have been authorized to retain the tenants' security deposit and the landlords have been provided a Monetary Order for the balance of \$902.29 to serve and enforce.

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: August 07, 2015

Residential Tenancy Branch

