Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Preliminary Issues

Upon review of the Landlords' application for dispute resolution the Landlords wrote the following, in part, in the details of the dispute:

> *APRIL RENT $1150, HYDRO – DEC 15 – FEB 16 $273.45 FEB 17 – APRI 17 $222.71 APR 18 – APR 30 45.00*

Based on the aforementioned I find the Landlords had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for rent or loss of rent after the effective date of the 10 Day Notice. Therefore, I amend the Landlords' application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement,* pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlords on April 22, 2015 seeking to obtain a Monetary Order for: unpaid rent or Utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by both Landlords and both Tenants. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each party acknowledged receipt of evidence served by the other and no issues were raised regarding service or receipt of that evidence, except for one hydro bill that was issued April 21, 2015. Each person gave affirmed testimony that they served the

Residential Tenancy Branch (RTB) with copies of the same documents they served each other, excluding the hydro bill of April 21, 2015 which was only submitted to the RTB by the Landlords.

The Landlords stated that their initial application was filed listing an estimated amount for the final hydro bills. They received the hydro bill the day after they filed their application so they amended the application prior to sending it to the Tenants. They did not serve the Tenants with a copy of the second hydro bill.

Rule of Procedure 3.14 provides that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the RTB not less than 14 days before the hearing.

Rule of Procedure 3.17 provides that the Arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the requirements set out in the Rules of Procedure.

Based on the above, I find the final or second hydro bill was not served upon the Tenants as required by Rules of Procedure 3.14. Accordingly, I found it would be prejudicial to the Tenants if I were to consider evidence that was not served upon them. Therefore, I declined to consider the April 21, 2015 hydro bill as evidence, pursuant to Rule of Procedure 3.17.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation?

Background and Evidence

Each party submitted a copy of the written tenancy agreement into evidence which indicated the Tenants entered into a month to month tenancy agreement with the previous owners of the property. The tenancy began on March 1, 2014 and rent of $1,150.00 was payable in advance on the first of each month. Total deposits of $675.00 were paid and described as being a security deposit of $375.00 and a pet deposit of $300.00. The deposits were paid on February 8, 2014, as noted on the tenancy agreement.

The undisputed evidence was that as per the written tenancy agreement electricity (hydro) and heat were not included in the rent. The Tenants were required to pay 50%

of the hydro bill which was split 50/50 with the tenants in suite 505A located on the middle level of the house.

The applicant Landlords purchased the property effective December 5, 2014. The hydro account was placed in the new Landlord's name and they would then try to collect hydro payments from the Tenants.

The rental unit was described as being one (1) of four (4) self-contained suites located in a four plex. The Tenants' unit 505B was a basement suite located on the lowest level of a three level house. Suite 505A was on the middle level, Suite 507A was on the upper level, and Suite 507B was located in the addition which was attached to the side of the house. There were two hydro meters for this property. Units 505A & 505B shared one hydro meter while 507A and 507B shared the other hydro meter.

The Landlords argued that the Tenants failed to pay them for hydro usage from December 2014 to the end of April 2015. They argued that despite their efforts to try and collect payment for the hydro costs the Tenants continued to argue reasons why they should not have to pay. They said the Tenants approached them and insisted that they only pay 40% of the hydro bill and when the Landlords refused the Tenants simply refused to pay the bills.

The Landlords now seek compensation for unpaid hydro in the amount of $541.16 which is comprised of the following: (1) $273.45 Dec 15, 2014 to Feb 16, 2015; (2) $222.71 February 17, 2015 to April 17, 2015; and (1) $45.00 as an estimated amount for April 18, 2015 to April 17, 2015. The Tenants were previously given a copy of the hydro bill for December 2014 through to February 16, 2015; however, they were not given a copy of the second bill which went from February 17 to April 17, 2015.

The Tenants argued that they should not have to pay 50% of the hydro bill because there were three hot water tanks in their rental unit and they had knowledge that their electricity bill included all of the electricity being used in the shared laundry room. The Tenants asserted that they also had suspicions that their hydro meter was providing power to the Landlords' unit.

The Tenants stated that they did not submit evidence to support their assertion that their hydro meter was supplying power to the Landlords' unit. Rather, they argued that their first bill (December 2014 to February 2015) was very large after the Landlords moved in.

The Tenants testified that although they had disagreements about the hydro bills since moving into the rental unit back in March 2014, they did not seek assistance through Dispute Resolution to resolve those issues and they did not obtain evidence, such as an electrical report, to support their allegations. They argued that when the new owners purchased the property and refused to resolve their concerns or reduce the percentage they had to pay, the Tenants simply refused to pay them for hydro.

On March 18, 2015 the Tenants served the Landlords with one month written notice to end their tenancy effective April 30, 2015. A copy of that notice was submitted on page 4A of the Landlords' evidence.

It was undisputed that the Tenants failed to pay their rent of $1,150.00 that was due on April 1, 2015. On April 2, 2015 the Landlords personally served the Tenants with a 10 Day Notice to end tenancy with an effective date of April 12, 2015, as provided in evidence.

The Landlords submitted copies of text messages received from the Tenants into evidence. Page 13J of that evidence included a text which was sent by the Tenants on April 12, 2015 at 08:48 a.m. which stated, in part, as follows:

> *Keys are on the counter, door is unlocked.*
> *Good riddance, maybe some day god will forgive you for your judgement, a lack of understanding and greed.*
>
> [Reproduced as written]

The Landlords stated that they attended the rental unit the afternoon of April 12, 2015. They found the keys inside and the unit left unclean and scattered with debris left by the Tenants. The Landlords pointed to their photographs in evidence which were taken on April 12, 2015 to support their claim of $280.00 for cleaning and $100.00 for junk removal.

The Landlords submitted that it took two of them approximately 7 hours to clean the rental unit and they charged $20.00 per hour (2 x 7 x $20.00 = $280.00). Upon further clarification the Landlords stated that they claimed $100.00 as an estimated cost to remove the debris. However, they did not incur costs to dispose of the debris left by the Tenants as the Landlords were able to give it away for free or place it in their municipal waste.

The Tenants testified and confirmed that they did not pay April 1, 2015 rent because of their financial struggles when one of them lost their job. They argued that they were evicted and moved out in accordance with the 10 Day Notice. The Tenants admitted that they may not have cleaned the oven or under the sink; however, they left the rest of the rental unit clean. As such they feel the Landlords' claim for seven hours of cleaning to be unjust.

The Tenants also confirmed that they had left some items behind in the rental unit and argued that they feel the Landlords' claims are outrageous because the Landlords did not pay to have those items removed.

In closing, the Landlords stated that the Tenants had tried to insist that they pay a lower hydro amount; however, no agreement was ever reached. The Landlords submitted that they were not able to re-rent the unit until August 1, 2015.

Analysis

The *Residential Tenancy Act* (the *Act),* and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Regarding End of Tenancy Date

Section 44 (1)(a) of the *Act* states that a tenancy ends if a tenant or landlord gives notice to end the tenancy in accordance with section 45 [*tenant's notice];* or section 46 [*landlord's notice: non-payment of rent];* of the *Act*

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 46 (1) of the *Act* provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Regarding Unpaid Rent

Section 26 of the Act stipulates, in part, that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

Policy Guideline 3 provides that a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provision, however if a tenant remains in possession of the premises (over holds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises.

Regarding Damages

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Regarding the Monetary Award

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 72 (2)(b) provides that if the director orders a tenant to a dispute resolution proceeding to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Regarding Filing Fee

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

In cases where there have been notices to end tenancy issued by each party the tenancy ends on the earliest of effective dates. Therefore, I conclude that this tenancy ended on **April 12, 2015** in accordance with the effective date of the 10 Day Notice and not April 30, 2015 which was the effective date of the Tenants' notice to end tenancy.

The 10 Day Notice was issued due to the Tenants' failure to pay April 1, 2015 rent which was a breach of section 26 of the *Act.* Although the Tenants vacated the property on or before April 12, 2015 in accordance with the 10 Day Notice, the Landlords suffered a loss of $1,150.00 rent and/or rental income for the full month of April 2015, due to the Tenants' breach. Accordingly, I find there was sufficient evidence to support the Landlords' claim and I grant them unpaid rent or loss of rent for April 2015 in the amount of **$1,150.00,** pursuant to section 67 of the *Act.*

Upon review of the claims for unpaid hydro, I accept that as per the tenancy agreement, the Tenants were required to pay 50 % of the hydro bill that was shared between units

505A and 505B. I further accept that the Tenants had raised issues with their former landlords as well as these Landlords regarding which hydro meter was connected to the laundry room and the three hot water tanks. That being said, the Tenants did not seek assistance through dispute resolution to resolve those issues, rather they chose to engage in arguments with their Landlords and simply refused to pay the hydro bills.

Based on the foregoing, and in absence of documentary evidence to prove the Tenants' assertions that their hydro meter was connected to power being supplied to the Landlords' unit, I conclude that the Landlords were entitled to claim for 50% of the hydro costs, pursuant to section 7(2) of the *Act*. That being said, I can only consider the claim amounts which relate to hydro invoices that were previously served upon and received by the Tenants.

As per the Landlords' own submission, only the hydro bill for the first amount claimed was served to the Tenants. The second bill was submitted to the RTB but not the Tenants and the third amount claimed was based on an estimated amount. Accordingly, I grant the Landlords' claim for hydro from the first bill for the period of December 15, 2014 to February 16, 2015 in the amount of **$273.45,** pursuant to section 67 of the *Act.* All remaining hydro amounts are dismissed, without leave to reapply.

I accept the undisputed evidence that the Tenants left the rental unit requiring additional cleaning and with some debris that had to be removed at the end of the tenancy in breach of section 37 of the *Act.*

Upon review of the photographs submitted by the Landlords, and from the Tenants' oral submissions, I find there to be sufficient evidence to prove the Landlords' submission that it took two of them seven hours to clean up the rental unit and remove the debris. I further accept that a claim for cleaning based on $20.00 per hour to be reasonable given the circumstances presented to me during the hearing. Accordingly, I grant the Landlords' claim for cleaning costs in the amount of **$280.00**, pursuant to section 67 of the *Act.*

The Landlords confirmed that they did not suffer a financial loss to discard the debris left behind by the Tenants, as claimed. Rather, the Landlords were able to utilize methods such as giving the items away or placing them in their municipal waste. Therefore, I find there was insufficient evidence to prove the claim of $100.00 to discard debris and the claim is dismissed, without leave to reapply.

The Landlord has partially succeeded with their application; therefore, I award recovery of the **$50.00** filing fee, pursuant to sections 67 and 72(1) of the Act.

I conclude that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

April 2015 rent and loss of rent	$1,150.00
Hydro Costs	273.45
Cleaning Costs	280.00
Filing Fee	50.00
SUBTOTAL	$1,753.45
LESS: Security Deposit $675.00 + Interest 0.00	-675.00
Offset amount due to the Landlords	**$1,078.45**

Conclusion

The Landlords have primarily succeeded with their application and were awarded monetary compensation of $1,753.45 which was offset against the Tenants' deposits of $675.00 leaving a balance due to the Landlords of $1,078.45.

The Landlords have been issued a Monetary Order in the amount of **$1,078.45.** This Order is legally binding and must be served upon the Respondent Tenants. In the event that the Respondent Tenants do not comply with this Order it may be filed with Small Claims 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: September 28, 2015

Residential Tenancy Branch