



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF (Landlords' Application)
 MNSD, FF (Tenant's Application)

Introduction

These hearings were convened in response to an Application for Dispute Resolution (the "Application") made by the Landlords on January 14, 2015 and by the Tenant on January 19, 2015.

The Landlords applied for a Monetary Order for: damage to the rental unit; unpaid utilities; to keep the Tenant's security and pet damage deposits; and for money owed or compensation for loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement. The Tenant applied for the return of double the security and pet damage deposits. Both parties also applied to recover the filing fee for the cost of making their Application.

The two Landlords, the Tenant, and the Tenant's parents (who acted as the Tenant's agent and a witness) appeared for the hearings and provided affirmed testimony. During the initial hearing, due to service of evidence issues between the parties, that hearing was adjourned to reconvene at this hearing. The service of evidence issues were documented in my Interim Decision dated July 29, 2015.

In this reconvened hearing, the parties confirmed the receipt of each other's Applications and evidence prior to this hearing. Therefore, the 3.5 hour hearing continued to hear the evidence of both parties. I asked the parties to alert me to any evidence being relied upon by the other party that they were not in possession of.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. I have considered the evidence provided by the parties in this case. However, I have only documented that evidence which I relied upon to make findings in this Decision.

Preliminary Issues

The Landlords had applied to keep a portion of the Tenant's security and pet damage deposits on the basis that the Tenant owed utilities and had failed to clean the rental unit. Therefore, I first turned my mind to the Landlords' Application for unpaid utilities. The parties presented extensive evidence and submissions in relation to outstanding utilities in this tenancy. The Tenant did not dispute that utilities were owing to the Landlords. However, the amount payable was in dispute.

After the parties finished presenting their evidence, I offered them an opportunity to settle this portion of the Landlords' Application by mutual agreement. Pursuant to Section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

The parties turned their minds to compromise and decided to reach resolution in relation to Landlords' Application for unpaid utilities. The parties agreed that the Tenant owed the Landlords **\$245.00** in unpaid utilities.

However, the parties were unable to reach resolution in the matter pertaining to the Landlords' claim for damages to the rental unit, namely the allegation that the Tenant failed to clean the rental unit at the end of the tenancy. Therefore, I turned my mind to the evidence provided by both parties as follows.

Issue(s) to be Decided

Are the Landlords entitled to cleaning costs for this tenancy?

Background and Evidence

Both parties agreed that this tenancy for a portion of the basement suite started on July 1, 2014 on a month to month basis. A written tenancy agreement was completed and rent was established at \$900.00 payable by the Tenant on the first day of each month.

The Tenant paid the Landlords \$450.00 as a security deposit and \$200.00 as a pet damage deposit (the "Deposits"), both of which the Landlords still retain. The parties confirmed that the tenancy ended on December 31, 2014 with written notice by the Tenant. The Landlords confirmed that they had not completed a Condition Inspection Report ("CIR") at the start or at the end of the tenancy. In fact, the Landlords did not even know that this was a requirement under the Act. The parties confirmed that the

Tenant had provided the Landlords with a forwarding address in writing on December 31, 2014.

The Landlords allege that at the end of the tenancy, the Tenant failed to leave the rental unit clean. As a result, the Landlords incurred \$280.00 worth of cleaning costs which they now claim from the Tenant.

The female Landlord testified that the Tenant had failed to clean cobwebs and mold in the rental unit and had also failed to clean the floors, leaving food scraps in the refrigerator. The female Landlord testified that she paid \$60.00 for 5 hours of cleaning to the incoming renter and \$40.00 for 2 hours of cleaning to the upstairs renters to clean the rental unit shortly after the Tenant vacated it.

The female Landlord testified that she contacted the Tenant repeatedly to come back to clean the rental unit but the Tenant did not respond. Therefore, the Landlords hired a professional cleaning company to complete the cleaning at a cost of \$138.00 two weeks later. In support of this the Landlords provided receipts.

The Landlords provided some photographs of the rental unit which they claim were taken at the end of the tenancy. These indicate black mould in the corner of a room, a close up photograph of a few items of garbage left under a dresser, kitchen drawers full of personal items, a moldy kettle which was just left on the counter, greasy countertops, a beer cap left in a kitchen draw, dirty carpets, and cleaning items under the kitchen cupboards.

The Tenant disputed the Landlords' evidence and claim for lack of cleaning. The Tenant explained that at the start of the tenancy, the rental unit was provided to him in a despicable and dirty state. The Tenant and his parents (the witness and the Tenant's advocate), spent a long time cleaning the rental unit. The Tenant's advocate and witness testified that the rental unit was provided to the Tenant in a dirty state.

In support of this, the Tenant provided photographic evidence showing the state of the rental unit at the start of the tenancy. The Tenant testified that at the end of the tenancy, the Tenant and his parents cleaned the rental unit and left it undamaged. The Tenant provided photographic evidence of the cleaning that was performed at the end of the tenancy including clean floors which were cleaned with a professional steam cleaner, a clean refrigerator, and clean bathrooms.

In rebuttal to the Landlords' evidence regarding the mold, the Tenant explained that the mold existed at the start of the tenancy and had worsened during the tenancy. The

Tenant provided photographs of the mold in the windows and pointed to the fact that the wooden window panes were old, cracked and in a state of disrepair that was exacerbating the mold; this was not caused through the Tenant's lack of cleaning.

The Tenant's advocate testified that they attempted to clean the mold with the steam cleaner but it was so ingrained in the woodwork and walls that it was not possible. The Tenant testified that the cleaning items underneath the sink in the Landlords' photographs were items the Landlords had provided to them at the start of the tenancy because he had complained that the rental unit was dirty.

The Tenant submitted that the photographs showing personal property in the drawers did not belong to him and submitted that these photographs did not reflect the state of the rental unit at the end of the tenancy. The Tenant submitted that the Landlords took these photographs after he had vacated the rental unit.

The female Landlord disputed the Tenant's evidence and stated that the rental unit was provided to the Tenant in a dirty state because the Tenant wanted to move in early and paid the outgoing renter money in exchange to have the rental unit early. The female Landlord acknowledged that the stove was dirty at the start of the tenancy but she bought a new one for the Tenant. The Landlord testified that when the Tenant complained of dirt behind the fridge freezer at the start of the tenancy, the Tenant ended up cleaning it themselves instead of allowing the Landlords' agent to clean it for them.

The Landlord pointed to a signed statement from the incoming renter who confirms that the rental unit had been received by her in a dirty state from the Tenant which confirmed the female Landlord's testimony.

The Tenant disputed the female Landlord's testimony but confirmed that the Landlords had provided a new stove. The Tenant's agent submitted that as the Landlords had failed to complete a move in or move out CIR, the Landlords would have to return double the amount of the Deposits back because the Landlords had extinguished their right to keep them. Therefore, they claim double the amount back from the Landlords of \$1,300.00.

Analysis

In relation to the Tenant's Application, I make the following findings. Section 36 of the Act provides that right of a landlord to claim against the tenant's Deposits **for damage to the residential property**, is extinguished if the landlord failed to meet the condition

inspection reporting requirements of the Act. In this case, it is clear that the Landlords failed to comply with the Act in completing either the move in or move out CIR.

However, under point 9 of Policy Guideline 17 to the Act, a landlord who has lost the right to claim against the Deposits for damage to the rental unit, still retains the right to file a claim against the Deposits for any monies owing for other than damage to the rental unit. This would include unpaid rent or utilities.

Therefore, as the Landlords made an Application to keep the Deposits for unpaid utilities, the Landlords did not extinguish their right to make a claim against the Deposits. Therefore, the doubling penalty being sought by the Tenant does not apply in this case. In addition, the Landlords were served with the Tenant's forwarding address in writing at the end the tenancy. Therefore, I find the Landlords made the Application to keep the Tenant's Deposits within the 15 day time limit set out by Section 38(1) of the Act. As a result, I continue to determine the Landlords' Application for lack of cleaning to the rental unit as follows.

Section 37(2) of the Act requires a Tenant to leave a rental suite reasonably clean and undamaged when they vacate the rental suite. A party that makes an Application for monetary compensation against another party has the burden to prove their claim. In addition, Section 21 of the *Residential Tenancy Regulation* states that a CIR can be used as evidence of the state of repair and condition of the rental suite, unless a party has a preponderance of evidence to the contrary.

In this case, the Landlord failed to complete a move in and move out CIR. Therefore, I must rely on the remaining evidence of the Landlords to determine if I am satisfied that the Tenant failed to reasonably clean the rental unit at the end of the tenancy. I first turn my mind to the parties' photographic evidence.

I find that the photographic evidence of Tenant contradicts the Landlords' evidence. For example, the female Landlord testified that the Tenant left scraps of food in the refrigerator, implying that it had not been cleaned. However, the Tenant's photographic evidence shows a clean refrigerator at the end of the tenancy. Therefore, I find it hard to believe that the Tenant would have cleaned the refrigerator at the end of the tenancy and then left food scraps in it thereafter.

In weighing up the corroborative evidence of each party, I find the Landlords' witness statement of the incoming renter who writes the rental suite was not cleaned when she moved in, is contradicted by the direct testimony of the Tenant's advocate and witness who were both present and helped the Tenant clean the rental unit at the end of the

tenancy. The Landlord's witness was not made available for the hearing for cross examination on this evidence. Therefore, I place little value on the Landlords' witness statement.

I am also confused as to why the Landlord paid three separate parties large amounts of money to clean the rental unit. The Landlord provided three separate invoices, and testimony explaining that the rental unit was left so dirty that she had to pay three parties to clean it, including a professional cleaning company. I find that if the rental unit was left so dirty at the end of the tenancy, then this should have resulted in photographic evidence that reflected this, since the Landlords went to the effort to take photographs. However, I find the Landlords' limited photographic evidence does not reflect or support the female Landlord's lengthy testimony that the Tenant left the rental suite in such a state that it required cleaning by several parties.

In relation to the mold in the rental unit, I find the Landlords have failed to provide sufficient comparative evidence to prove that the mold was not in existence at the start of the tenancy. Furthermore, the Landlords failed to provide sufficient evidence that the mold indicated in their photographs stemmed directly from the Tenant's failure to clean the rental unit.

The Tenant disputed the Landlord's evidence and I find the Landlords failed to provide sufficient comparative evidence that would suggest on the balance of probabilities the Tenant failed to clean the rental unit. In conclusion, I found the Tenant's evidence more plausible than the Landlords and I find the Landlord's evidence does not satisfy me that the Tenant failed to comply with Section 37(2) of the Act. Therefore, I dismiss the Landlords' Application for damages to the rental unit without leave to re-apply.

Section 72(2) (b) of the Act states that if the director orders a party to pay an amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any Deposits. Therefore, as the parties mutually agreed on \$245.00 as a settlement amount for unpaid utilities, I allow the Landlords to deduct this amount from the Tenant's Deposits. This results in a remaining balance owed to the Tenant in the amount of **\$405.00** which must be returned to the Tenant forthwith.

As both parties have been partially successful in their Applications, I decline to order any payment of the filing fees. Therefore, the request for the recovery of the filing fee for both Applications is dismissed without leave to re-apply.

The Tenant is issued with a Monetary Order for amount owed by the Landlords. This must be served on the Landlords if voluntary payment is not made forthwith after receipt

of this Decision by the Landlords. The Tenant may then file and enforce the order in the Provincial Court (Small Claims). Copies of the order are attached to the Tenant's copy of this Decision.

Conclusion

The Landlords' Application for damages to the rental unit is dismissed due to a lack of sufficient evidence. The Landlords' Application for unpaid utilities was mutually agreed between the parties in the amount of \$245.00 which the Landlord may recover from the Tenant's deposits of \$650.00.

The Landlords must return the remaining balance of \$405.00 back to the Tenant to satisfy the Tenant's Application. Both files are now closed.

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: October 14, 2015

Residential Tenancy Branch

