



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MNR, MND, MNSD, FF

For the tenant – MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlords applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlords to keep all or part of the tenant's security and pet deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant applied for a Monetary Order to recover the security and pet deposit and to recover the filing fee from the landlords for the cost of this application.

The tenant and the female landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep the security and pet deposit?
- Is the tenant entitled to a Monetary Order to recover the security and pet deposit?

Background and Evidence

The parties agreed that this tenancy started on April 01, 2011. This was a fixed term tenancy for one year and thereafter reverted to a month to month tenancy. Rent for this unit is now \$1,594.00 per month due on the 1st of each month. The tenant paid a security deposit of \$750.00 on March 11, 2011 and a pet deposit of \$400.00 on April 01, 2011.

The landlord's application

The landlord testified that the tenant attended the move in and the move out inspection of the unit but refused to sign the move out inspection report and a copy of this was not sent to the tenant. The tenant provided a forwarding address by email to the landlord prior to vacating the rental unit. The landlord testified that the tenant caused damage to the hot tub provided with the rental unit. The tenant neglected the maintenance of the hot tub and had informed the landlord that the tenant had only changed the water twice in four years. The landlord had put new filters in the hot tub and the tenant had put the old filters back in. The protective seal around the control panel had been removed and this allowed water to get into the control panel. The landlord testified that this information was provided to the landlord by the technician who repaired the hot tub but the owner of the company did not want to get involved or put anything in writing to this effect. The landlords seek to recover the cost for the hot tub repair of \$1,604.07 and have provided the invoice in documentary evidence.

The landlord testified that the tenant caused damage to the horizontal blinds in the dining room. Four panels had been ripped out and the plastic clips were damaged. These could not be replaced and the entire blind had to be replaced. The tenant had informed the landlord that the blinds were damaged and stated that she would see about replacing them; however, failed to do so. The blinds were approximately seven years old and the landlords seek to recover replacement costs of \$189.28. A copy of the invoice has been provided in documentary evidence.

The landlord testified that at the start of the tenancy the carpets were old and this was indicated on the move in inspection report. The carpets had been cleaned prior to the tenants moving into the unit. The basement carpets suffered some damage by the tenants' pets that caused fraying on the carpets in the doorway. These carpets were five years old. The upstairs carpets were 10 years old and had a nasty urine smell from the tenants' pets. This smell was very bad in the master bedroom. The landlords had a carpet cleaner come in to clean the carpets. This was unsuccessful as the urine smell came back through the rubber backing of the carpet. The carpet cleaner recommended that the carpets be replaced. The landlords replaced two bedroom carpets upstairs and two bedroom carpets downstairs at a cost of \$2,868.97. A copy of the invoice has been provided in documentary evidence.

The landlord testified that the tenants were served a One Month Notice to End Tenancy on March 25, 2015. The tenants failed to pay rent for April, 2015 of \$1,594.00. A 10 day Notice was then served to the tenants on April 02, 2015 and the tenants vacated the rental unit on April 15, 2015. The landlords seek to recover the rent owed for April, 2015.

The landlords seek an Order allowing them to keep the security and pet deposit to a total amount of \$1,150.00 to offset against the unpaid rent or damages. The landlord testified that they have restricted their claim to \$5,000.00. The landlords also seek to recover their filing fee of \$50.00.

The tenant's rebuttal

The tenant testified that they refused to sign the move out inspection report as the landlords' property manager was trying to make the tenants sign over the security and pet deposit and the tenants did not agree to this.

The tenant disputed the landlords' claim for the hot tub repair. The tenant testified that when they moved into the unit the hot tub lid needed to be replaced and the landlords agreed to do this. It took the landlords over a year to replace the lid and this caused water to get into the hot tub mechanism. The tenant testified that they know nothing about the seal being missing and the filters were power washed regularly and the water was changed each year. All the required chemicals were added to the water. In February or March when the tenant went to put more chemicals into the water the water was found to be cold. The tenant contacted the landlords and the female landlord said for either the tenant to contact the hot tub repair company or the landlord would. The tenant called the company and left a message; however, they did not get back to the tenant. The landlord became angry at the tenant for not chasing the company up. Eventually a repair man did come out and informed the tenant that the hot tub was 15 years old and the circulatory pump had blown which had then blown the mother board. He also stated that this happens in older hot tubs.

The tenant testified that with regard to the horizontal blinds; the plastic clips had broken off some of the panels. The tenant did some research and found that the clips and panels could just be replaced at a cost of around \$12.00 each; however, the tenant agreed she never got around to doing these repairs.

The tenant disputed the landlords' claim for replacement carpets. The tenant testified that when they moved into the unit the carpets were old, dark and dirty. The landlord had promised to replace them within a year while they decided whether or not to put down new carpets or other flooring. The carpets were disgusting and mouldy in places. There had also been a water leak and the landlords' son came and pulled back the carpet and put a fan under to dry it out. No investigation was carried out as to the cause of the leak. The tenant agreed that the landlord had cleaned the carpets at the start of the tenancy but they were still old and dirty. The tenant testified that this has been recorded on the move in inspection report.

The tenant agreed they did not pay rent for April, 2015. The landlord had given the tenants a One Month Notice and then sent text messages to the tenant which led the tenant to understand that they were not required to pay rent for April.

The tenant agreed at the hearing that the landlord may keep the security and pet deposit to an amount of \$1,150.00 to offset against the unpaid rent for April, 2015.

The tenant's application

As the tenant has agreed at the hearing that the landlords may keep the security and pet deposit no further testimony was required concerning the tenant's application to recover the security and pet deposit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords application for a Monetary Order for damages; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I find the landlords have not met the burden of proof that the tenant or other occupants caused damage to the hot tub through their actions or neglect. Older hot tubs have a tendency to malfunction and any repairs would therefore have to be met by the landlords. The invoice provided in documentary evidence refers to the repairs made to the hot tub and makes no mention that the seal was missing; however, it does make mention that the flow switch and housing, the key pad, the circuit board and the circ pump were stripped. I therefore prefer the testimony of the tenant in this matter and dismiss this section of the landlords' claim for \$1,604.07 without leave to reapply.

With regard to the landlords' claim for replacement blinds. I am satisfied that the blinds were damaged during the course of the tenancy. The tenant agreed that she knew of the damage and that she intended to repair some sections of the blinds but failed to do so. I therefore find that the tenants are responsible

for costs incurred to replace the blinds; however, the landlord testified that the blinds were seven years old and I must therefore take into account some depreciation values of the blinds. I refer the parties to the Residential Tenancy Policy Guidelines # 40 which details the useful life of building elements. This guideline states that the useful life of drapes and venetian blinds is 10 years. I must therefore deduct 70 percent of the replacement costs of the blinds for depreciation and award the landlords the sum of **\$56.78**.

With regard to the landlords' claim for carpet replacement; The landlord testified that although the carpets were old they had been cleaned at the start of the tenancy and were left frayed and smelling strongly of pet urine. The tenant testified that the carpets were old, dark, dirty and worn at the start of the tenancy and that the landlord documented this on the move in inspection report. The tenant disputed that the carpets smelt of pet urine. I have considered the documentary evidence before me and find the landlords have provided insufficient evidence to show that the carpets smelt of pet urine. The photographic evidence provided shows old worn and stained carpets. The move in inspection report documents that the carpets were poor, dirty, looking old (cleaned). The landlords have provided no evidence from the carpet cleaner to show that attempts were made to clean the carpets prior to replacing them or that they smelt of pet urine. I have also taken into account the age of the carpets and applied this to the useful life of carpets which is documented as being 10 years. I am not therefore satisfied from the evidence before me that the tenants are responsible to pay for replacement carpets as the carpets were in a poor condition at the start of the tenancy and at least two carpets had reached the end of their useful life. This section of the landlords' claim for \$2,868.97 is therefore dismissed without leave to reapply.

With regard to the landlords' application to recover unpaid rent for April, 2015 of \$1,594.00; I refer the parties to s. 26 of the *Act* which states:

26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There is insufficient evidence to show that the tenant has a right under the *Act* to deduct the rent for April; even if the landlords did serve the tenant with a One Month Notice to End Tenancy for cause the tenants recourse could have been to file an application to dispute the Notice if the tenant disagreed with the reasons indicated on the Notice to end the tenancy. There is nothing to indicate that the landlords agreed that tenant could withhold rent for April and consequently I find in favor of the landlords' claim to recover the unpaid rent for the entire month of April of **\$1,594.00**.

With regard to both parties application concerning the security and pet deposit; the tenant agreed at the hearing that the landlords could retain the security and pet deposit in full to offset against the unpaid rent.

I therefore uphold the landlords' application to keep the security and pet deposit and I have offset this against the unpaid rent.

The tenant's application to recover the security and pet deposit is therefore dismissed.

As the landlord's claim has some merit I find the landlords are entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords for the following amount:

Unpaid rent for April, 2015	\$1,594.00
Blinds	\$56.78
Filing fee	\$50.00
Less security and pet deposit	(-\$1,150.00)
Total amount due to the landlords	\$550.78

Conclusion

For the reasons set out above, I grant the landlords a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$550.78**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

The tenant's application is dismissed in its entirety without leave to reapply.

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 06, 2015

Residential Tenancy Branch

