



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, MNDC, FF

For the tenants – MNSD

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants applied for a Monetary Order to recover the security deposit.

The tenants and landlord attended the conference call hearing; the landlord was accompanied by a translator. The parties gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlord was permitted to provide additional evidence after the hearing had concluded. The tenants testified that they were missing part of the landlord's evidence namely the invoice for repairs. The tenants did not require an adjournment of the hearing but requested that the Arbitrator read them the invoice for repairs provided by the landlord in documentary evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or a loss of rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security deposit?
- Are the tenants entitled to a Monetary Order to recover the security deposit?

Background and Evidence

The parties agreed that this fixed term tenancy started on September 15, 2014 and was due to end on September 15, 2015. Rent for this unit was \$1,800.00 per month due on the 1st of each month in advance. The tenants paid a security deposit of \$900.00 on September 15, 2014.

The landlord's application

The landlord testified that he walked through the unit with the tenants at the start and end of the tenancy but agreed that he did not complete a move in or move out condition inspection report. The landlord testified that he identified some damage to the unit as follows at the end of the tenancy:

- The painting required touch up painting from scratches caused by the tenants when they moved in and out of the unit. The landlord testified that the unit was freshly painted at the start of the tenancy. The landlord seeks to recover \$500.00 for this work.
- The hardwood staircase edging was damaged and this had to be repaired, changed and stained. The landlord seeks to recover \$200.00 for this work.
- The unit was a no pet unit and the tenants had allowed two cats in the unit. The landlord had to clean cat hair and feces from inside and outside the unit. The landlord seeks to recover \$150.00 for this work.

- The garburator was struck. This required servicing. The landlord paid \$100.00 for this work.
- The faucet head on the kitchen sink was missing. This head had to be changed. The landlord seeks to recover \$100.00 for the new faucet head and labour.
- The two way switch on the stairs was broken and the cover was removed. The landlord seeks to recover \$50.00 for the repair, replacement cover and labour.
- The tenants failed to replace burnt out light bulbs in the fridge, hood fan cover and four other bulbs. The landlord seeks to recover \$60.00 for the replacement bulbs and labour.
- The tenants failed to return the keys to the unit and the landlord changed the locks for the new tenants. The landlord seeks to recover \$150.00 for the locks and labour costs.

The landlord testified that the entire invoice for repairs came to \$1,310.00; however, the landlord only seeks to recover \$1,000.00 for the repairs.

The landlord testified that the tenants ended the tenancy before the end of the fixed term. The tenants had provided notice to the landlord on March 17, 2015. This Notice had an effective date of April 30, 2015. The tenants vacated the rental unit on that date. However, the landlord was not able to re-rent the unit despite the tenants' efforts to find new tenants until May 10, 2015. The landlord seeks to recover a loss of rent of \$600.00 for the first 10 days of May, 2015.

The landlord seeks an Order to be permitted to keep the security deposit to offset against the unpaid rent and damages to the unit. The landlord also seeks to recover the filing fee of \$50.00.

The tenants dispute the landlord's claim for damages. The tenants testified that when they moved into the unit the paint work was not good and there was no evidence that the unit had been freshly painted. The tenants disputed that they caused any scratches

to the walls in the unit when they moved in and out and even if minor scratches had occurred it would not warrant a charge of \$500.00.

With regard to the staircase edging; the tenants testified that this was already cracked and when the tenants walked up the stairs carrying their children the edge broke off. This was not done through the tenants neglect but would be normal wear and tear. The tenants notified the landlord of this damage but the landlord suggested that the tenants should repair the stair edge.

The tenants testified that when they moved into the unit they had just sold their condo and they had two cats. They were unsure what they were going to do about the cats and the tenants had mentioned them to the landlord in case the cats did have to come and live with the tenants in the unit. The landlord was aware the cats were there and when they discussed it the landlord said that they had turned a blind eye to the cats. No pet damage deposit was ever asked for. The tenants testified that they cleaned the unit thoroughly at the end of the tenancy and are unsure what cleaning the landlord would have had to do with regard to the cats.

The tenants testified that the garburator was in good working order during and at the end of the tenancy. If the landlord had to service this appliance then it is the landlord's responsibility.

The tenants testified that the faucet on the kitchen sink was not missing or damaged. The tenants testified that they were not even aware that the faucet had a separate pull out section.

The tenant agreed that the switch cover was damaged during their tenancy but the switch was working fine at the end of the tenancy; the tenants disputed that a switch cover would cost \$50.00 and could be replaced for a few dollars.

The tenants agreed the fridge light bulb burnt out during the tenancy but testified that the fan lights were working. The tenants testified that some other bulbs may have also burnt out but as the ceilings are 15 feet high the tenants could not replace those bulbs.

The tenants testified that they did return all the keys to the unit to the landlord when they met to do the walk through inspection of the unit on May 04, 2015. The tenants testified that the landlord had informed them that he always changes the locks for new tenants.

The tenants disputed the landlord's claim for a loss of rent for May. The tenants testified that they had a verbal agreement with the landlord that they did not have to fulfill the lease if they found a new place to purchase during the tenancy. As soon as the tenants found a new home they gave the landlord over a month's notice and advertised the unit. They also allowed the landlord to show the unit to prospective tenants without the required 24 hour notice.

The tenants asked the landlord if the faucet was actually broken and can the landlord explain how it was broken. The landlord responded that the faucet was broken. The spray part of the faucet that you pull out had a broken head and was not functional. The tenant asked the landlord if this part of the faucet was examined when the tenants moved into the unit. The landlord responded that he assumed the tenants had broken it as they did not mention it was broken during the tenancy. The tenants asked the landlord if the unit was freshly painted when they moved in and does the landlord have evidence of this. the landlord responded that the same contractor and the landlord did the painting.

The tenants' application

The tenants seek to recover their security deposit. The tenants testified that when they gave notice to end their tenancy they requested an inspection of the unit. The landlord did not do this until May 04, 2015 and this was conducted by the landlord and the female tenant. The female tenant testified that the landlord did not make any comment

about any damages or about withholding the security deposit. The tenants then sent the landlord another letter requesting their security deposit be returned. The tenants testified that they provided a forwarding address in their notice letter on March 17, 2015 and again on May 04, 2015. Both letters have been provided in documentary evidence.

Analysis

With regard to the landlord's claim for damage to the unit, site or property; 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 have reviewed the documentary evidence and testimony before me and find with regard to the landlord's claim for painting touch ups that the tenants disputed that they had caused damage to the walls, the landlord has insufficient corroborating evidence to show that the walls had been freshly painted at the start of

the tenancy or that the tenants had caused scratches to the walls that would warrant a charge of this nature to be passed onto the tenants. The landlord did not complete a move in condition inspection report of the unit at the start or end of the tenancy which could have been deemed sufficient evidence to determine any damage caused during the tenancy. In this matter I find the landlord has not met the burden of proof and this section of his claim is dismissed.

With regard to the landlord's claim for the staircase edging; if the staircase edge was already cracked as claimed by the tenants then without further corroborating evidence from the landlord to show that this was broken through the tenants' actions or neglect and not through normal usage, then the landlord has failed to meet the burden of proof in this matter and this section of the landlord's claim is dismissed.

With regard to the landlord's claim for house cleaning due to the tenants' cats; the landlord has provided insufficient evidence to show that the tenants did not leave the rental unit in a reasonable clean condition as required under s. 32 of the *Act*. The landlord has insufficient evidence to show that cat hairs and feces were present at the end of the tenancy and that the unit was not simply cleaned again for the benefit of the new tenants. The landlord has failed to meet the burden of proof in this matter and the landlord's claim is dismissed.

With regard to the landlord's claim for the garburator service; If appliances require servicing then this is the landlord's responsibility and not that of the tenants. The landlord has insufficient evidence to meet the burden of proof that the tenants damaged the garburator in any way and consequently this section of the landlord's claim is dismissed.

With regard to the landlord's claim for the faucet; the landlord has insufficient evidence to show that the tenants are responsible for any damage to the pull out section of the faucet and that the faucet was not damaged at the start of the tenancy. The landlord

has failed to meet the burden of proof in this matter and the landlord's claim is therefore dismissed.

With regard to the landlord's claim for the broken switch and cover; the landlord has insufficient evidence to show that the switch was damaged; however, the tenants agreed the switch cover was broken during their tenancy. The landlord seeks to recover the amount of \$50.00 to repair the switch and replace the cover. I must therefore limit the landlord's claim to an amount just for the broken cover and for the labour costs to fit this to a nominal amount of **\$10.00**.

With regard to the landlord's claim to replace burnt out light bulbs. The tenants agree that the fridge bulb and some other bulbs were not replaced after they burnt out. The tenants argued that the ceiling bulbs are 15 feet high and so could not be replaced by them; however, any light bulbs that burn out during a tenancy are the tenants' responsibility to replace unless they have an agreement with the landlord to the contrary. I therefore uphold the landlord's claim to recover the cost to replace the light bulbs in the ceiling and fridge. The landlord has insufficient evidence to show the hood fan bulb was also burnt out and therefore I must limit the landlord's claim to **\$50.00**.

With regard to the landlord's claim for replacement locks; the landlord testified that the tenants did not return the keys; the tenants testified that they did return the keys on May 04, 2015 directly to the landlord during the inspection. In this matter it is one person's word against that of the other and therefore the burden of proof is not met. If the landlord changed the locks for the new tenants then the landlord must do so at his own expense. This section of the landlord's claim is dismissed.

With regard to the landlord's claim for a loss of rent; I refer the parties to s.45(2) of the *Act* which states:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

The tenants agreed that this was a fixed term tenancy that was not due to end until September 15, 2015 yet the tenants gave notice to end the tenancy at the end of April, 2015. The tenants signed the tenancy agreement and have provided insufficient evidence to show that they had a different agreement allowing them to end the tenancy before September 15, 2015. Consequently, the tenants are responsible for any rent up to either the legal end of the tenancy or the date the landlord re-rented the unit.

The landlord has provided a copy of a tenancy agreement signed by the new tenants on May 10, 2015 which shows the unit was re-rented on this date. Consequently, I am satisfied that the landlord re-rented the unit from May 10, 2015 and is therefore entitled to a loss of rent from May 01 to May 09, 2015. I have calculated the rent at \$58.06 a day; therefore, The landlord is entitled to recover nine days rent which equals **\$522.54**.

I Order the landlord to keep the following amount from the security deposit of \$900.00.

There is no accrued interest on the deposit for the term of the tenancy:

Switch cover	\$10.00
Light bulbs	\$50.00
Loss of rent	\$522.54
Total amount due to the landlord	\$582.54
Security deposit	\$900.00
Total amount due to the tenants	\$317.46

As both parties paid a filing fee of \$50.00 and both parties applications have been partially successful I find the parties must bear the cost of filing their own applications.

Conclusion

For the reasons set out above, I grant the landlord a monetary award of **\$582.54** pursuant to s. 67 and 38(4)(b) of the *Act*. The landlord may retain this amount from the security deposit.

For the reasons set out above, I grant the tenants a Monetary Order pursuant to s. 38(6)(b) of the *Act* in the amount of **\$317.46**. This Order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the landlord fails to comply with the Order.

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 21, 2015

Residential Tenancy Branch

