



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Macgregor Realty & Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing dealt with the tenants' application for monetary compensation. The tenants participated in the teleconference hearing but the landlord did not.

The tenants submitted evidence to establish that the landlord was served with the application for dispute resolution and notice of hearing by registered mail sent on June 9, 2015. Section 90 of the Act states that a document is deemed to have been served five days after mailing. I found that the landlord was deemed served with notice of the hearing on June 14, 2015, and I proceeded with the hearing in the absence of the landlord.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on August 1, 2014, with monthly rent of \$3,500.00 payable in advance on the first day of each month. At the outset of the tenancy the tenants paid the landlord a security deposit of \$1,750.00.

The tenancy ended in March 2015.

Previous Dispute Resolution Hearing

On May 7, 2015 the landlord and the tenants participated in a teleconference hearing pursuant to the tenants' application for monetary compensation and other remedies. The decision in that matter was issued May 8, 2015. In that hearing the arbitrator limited

the tenants' claim to compensation for damaged personal property, specifically patio furniture and towels. The landlord agreed to compensate the tenants for patio furniture, acknowledging that he was aware that water was dripping from the vents onto the covered area of the patio, and other units in the building had the same issue.

The only outstanding issue to be determined was the tenants' claim for the cost of towels that had become damaged due to a leak in the rental unit. The arbitrator found that the landlord was negligent in addressing this issue, as he left the tenants to handle the leak that was ongoing for several weeks. The arbitrator granted the tenants' claim for the cost of the damaged towels.

Tenants' Current Claim

- a. \$3,500.00 for April 2015 rent

The tenants stated that they gave the landlord notice that they intended to vacate, and they moved out of the rental unit on March 26, 2015. The tenants stated that the landlord illegally cashed the tenants' post-dated rent cheque of \$3,500.00 for April 2015 rent.

- b. \$3,500.00 for double recovery of security deposit

The tenants stated that they did not want to give the landlord their new address, so they arranged for mail forwarding from the rental unit address. The tenants stated that the landlord received the tenants' forwarding address in their application and evidence when the tenants made this application on June 9, 2015.

- c. \$1,013.00 for moving expenses

The tenants stated that they were forced to move from the rental unit because the landlord would not do necessary repairs. The female tenant stated that on one occasion she slipped on water on the floor in the hallway. The tenant stated that the water was from the leak in the laundry room that the landlord would not fix.

- d. \$1,750.00 for loss of use of laundry room

The tenants stated that because the landlord did not fix the leak in the laundry room, they lost use of the laundry room from January 13, 2015 to the end of the tenancy on March 26, 2015. The tenants calculated this amount to represent 25 percent of the rent for two months.

- e. \$875.00 for loss of use of bathtub

The tenants stated that in September 2014 they lost use of the bathtub, and the landlord did not repair it for over one month. The tenants have calculated this amount as 25 percent of one month's rent.

- f. \$2,800.00 for loss of use of patio

The tenants stated that they could not use the patio because water was constantly leaking onto it. The tenants claimed 10 percent of the monthly rent for the duration of the tenancy.

- g. \$9.00 for courier costs

The tenants claimed this amount for the costs to serve the landlord with their application and evidence.

In support of their application the tenants submitted receipts for their moving costs and extensive documentary and photographic evidence.

Analysis

- a. \$3,500.00 for April 2015 rent

I accept the tenants' evidence that the tenancy ended on March 26, 2015, and therefore the landlord was not entitled to cash the tenants' rent cheque for April 2015. I grant the tenants the amount of **\$3,500.00**.

- b. \$3,500.00 for double recovery of security deposit

I find that the tenants did not provide their forwarding address in writing prior to making this application, and they are therefore not entitled to double recovery of the security deposit. The tenants are entitled to recovery of the base amount of the deposit, in the amount of **\$1,750.00**.

c. \$1,013.00 for moving expenses

I am not satisfied that the tenants were forced to move due to the landlord's action or inaction. The tenants had made an application for an order that the landlord comply with the Act as well as for a reduction in rent, but the tenants then chose to vacate the rental unit rather than continue with that portion of their application. I therefore dismiss this portion of the application.

d. \$1,750.00 for loss of use of laundry room

In the decision dated May 8, 2015, the arbitrator made a finding that the landlord was negligent in addressing the leak in the laundry room, and I am bound by that finding. However, I find that compensation equalling 25 percent of the rent is excessive, given that the tenants were renting the entire house and they did not provide sufficient evidence to show that their inability to use the laundry room was worth 25 percent of the value of their rent. I find that 15 percent, or \$525.00 per month, is a reasonable amount, and I grant the tenants **\$1,050.00** for loss of use of the laundry room for two months.

e. \$875.00 for loss of use of bathtub

I accept the tenants' evidence that they lost use of the bathtub for approximately one month because of the landlord's delays. However, I find that compensation equalling 25 percent of the rent is excessive, given that the tenants were renting the entire house and they did not provide sufficient evidence to show that their inability to use the bathtub was worth 25 percent of the value of their rent. I find that 10 percent, or **\$350.00**, is a reasonable amount, and I grant the tenants that amount for loss of use of the bathtub for one month.

f. \$2,800.00 for loss of use of patio

In the hearing on May 7, 2015, the landlord acknowledged that there was a problem with water dripping from vents onto the covered area of the patio. I accept the tenants' evidence that they were restricted from using the covered patio. However, the tenants did not provide sufficient evidence to show how they planned to use the patio but could not because of the dripping water. I therefore grant the tenants a nominal award of **\$280.00** for loss of use of the patio.

g. \$9.00 for courier costs

The costs associated with the dispute resolution process, aside from the filing fee, are not normally recoverable, and I find that the tenants did not provide evidence that their courier costs were incurred as a result of an extraordinary situation.

Filing Fee

As the tenants' application was partially successful, I find they are entitled to recovery of their filing fee of **\$100.00**.

Conclusion

I grant the tenants an order under section 67 for the balance due of **\$7,030.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The remainder of the tenants' application is dismissed.

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 26, 2015

Residential Tenancy Branch

