



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNSD

Introduction

This hearing concerns the landlords' application for a monetary order as compensation for unpaid rent or utilities / compensation for damage to the unit, site or property / and retention of all or part of the security deposit.

A hearing was previously held on September 16, 2015 with both parties in attendance. However, as a result of unforeseen circumstances, the Arbitrator who conducted the hearing was unable to issue a decision. In the result, by letter dated November 02, 2015 the Residential Tenancy Branch (the "Branch") informed the parties that a new hearing would need to be conducted. Enclosed with the Branch's letter was a "notice of a dispute resolution hearing," in which the parties were informed of the time and date of the new hearing, in addition to the telephone number and access code for participating. In the Branch's letter the parties were also informed that, "The written record as it existed at the time of the original hearing, plus any sworn testimony presented at the new hearing, will form the basis for the decision."

The new hearing was scheduled to commence by way of telephone conference call at 11:00 a.m. on November 12, 2015. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlords are entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the month-to-month tenancy began on September 01, 2013. Monthly rent of \$1,750.00 was due and payable in advance on the second day of each month, and a security deposit of \$875.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

Following notice given by the tenants, tenancy ended on March 31, 2015. While the parties completed a move-out condition inspection of the unit together on April 02, 2015, a move-out condition inspection report was not completed at that same time. On this occasion the tenants also provided the landlords with their forwarding address in writing. The landlords claim that the move-out condition inspection report was not completed on April 02, 2015, as the tenants appeared to be in a rush, and as the landlords wished to provide them with an opportunity to have the upstairs carpet cleaned. The tenants testified that, further to the carpets, the landlords identified no other concerns with the condition of the unit when they did the walk-through on April 02, 2015. Subsequently, the carpet was cleaned, and on April 07, 2015 the landlords completed the move-out condition inspection report in the absence of the tenants. The landlords testified that they tried to arrange for the tenants to complete an additional move-out condition inspection together, but it was not until April 10, 2015, when the tenants came back to the unit to return a key. New renters took possession of the unit on April 15, 2015.

The landlords filed their application for dispute resolution on April 09, 2015. In their application the landlords seek certain compensation arising from allegedly unpaid utilities, and other costs related to the condition of the unit at the end of tenancy.

Analysis

At the outset, the attention of the parties is drawn to the following legislation:

ACT

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

REGULATION

Part 3 – Condition Inspections (sections 14 to 21)

Based on the documentary evidence and affirmed testimony of the parties, the various aspects of the landlords' application and my related findings are set out below.

\$366.33: *unpaid utilities*

During the hearing the tenants testified that they do not dispute this claim.

Accordingly, I find that the landlords have established entitlement to the full amount.

\$150.00: *labour for cleaning of unit*

Section 37 of the Act addresses **Leaving the rental unit at the end of tenancy**, in part:

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and....

I find that there was an opportunity to complete the move-out condition inspection report on April 02, 2015, while both parties were present in the unit during the completion of the move-out condition inspection. However, such an opportunity was not taken. I find that there is no conclusive evidence that the landlords informed the tenants at that time of any concerns about the condition of the unit which were further to the condition of the carpet. I also find that subsequent attempts by the landlords to contact the tenants in order to complete a second move-out condition inspection, do not satisfy the requirements set out in section 17 of the Regulation, which addresses **Two opportunities for inspection**. In the result, I find there is insufficient evidence that after the end of the tenancy of about 1½ years, the tenants failed to “leave the rental unit reasonably clean,” and this aspect of the application must be dismissed.

\$129.99: *cleaning supplies & light bulbs*

Following from the findings set out immediately above, I find that the claim for cleaning supplies must also be dismissed. However, during the hearing the tenants acknowledged that there may have been some burnt out lightbulbs which were not replaced at the end of tenancy. In the result, in view of irregularities associated with the manner in which the move-out condition inspection report was completed, and in the absence of a clear and easy-to-read break-out of light bulb costs from other costs itemized on a receipt, I find that the landlords have established entitlement to **\$40.00**.

\$94.35: *replacement of cracked bathroom sink*

\$140.00: *labour for installation of new sink*

In consideration of the probable age of the sink, reasonable wear and tear, as well as photographs submitted in evidence, but more critically in view of irregularities associated with the manner in which the move-out condition inspection report was completed, I find that the landlords have established entitlement limited to **\$50.00**.

\$200.00: *painting doors / trim*

Residential Tenancy Policy Guideline # 40 speaks to the “Useful Life of Building Elements,” and provides that the useful life of interior paint is 4 years. The landlords testified that the doors and trim had previously been painted approximately 6 years ago. This, in addition to consideration of a tenancy spanning a period of approximately 1½ years, leads me to finding that the landlords have failed to meet the burden of proving entitlement to this aspect of the claim, and it is therefore dismissed.

\$40.00: *remove residue from walls*

\$100.00: *painting over drill holes in walls*

For reasons similar to some of those already set out above, I find that the landlords have established entitlement limited to **\$50.00**.

Total entitlement: \$506.33

Conclusion

I order that the landlords may withhold **\$506.33** from the security deposit of **\$875.00**, and I further order that the landlords repay the balance of **\$368.67** to the tenants.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$368.67** (\$875.00 - \$506.33). This order may be served on the landlords, filed in the 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: November 13, 2015

Residential Tenancy Branch

