



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for overholding; utility costs; cleaning of the residential property; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 57, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of 3 pages of a tenancy agreement signed by both parties on September 17, 2014 for a month to month tenancy beginning on October 2, 2014 for a monthly rent of \$1050.00 due on the 1st of each month with a security deposit of \$525.00 paid. The agreement stipulated that only utilities included in the rent were electricity; water; and garbage collection;
- A copy of a portion of a previous Dispute Resolution Decision that records a settlement between the parties that the tenants would vacate the rental unit by 1:00 p.m. on June 30, 2015;
- Copies of several photographs that the landlord submits records the condition of the rental unit at the end of the tenancy;
- Copies of several text messages between the parties regarding overholding of the rental unit and the security deposit, including the provision of the tenants' forwarding address on July 1, 2015;
- Copies of receipts totaling \$210.00 showing the landlord paid for yard maintenance during the tenancy;

- A copy of a receipt in the amount of \$100.00 for the removal of abandoned furniture and refuse;
- A copy of a receipt in the amount \$247.50 for cleaning of the interior of the rental unit showing 2 ¼ hours at \$110.00 per hour; and
- A copy of a gas bill for the relevant period with some overlap with a 3 week period after the end of the tenancy. The gas bill is for \$587.37 but the landlord claims only \$528.30.

The parties confirmed that a condition inspection was not completed at the start of the tenancy. The landlord testified that she had been trying to figure out what time she should attend the property to complete the move out condition inspection because the tenants were to be out of the rental unit by 1:00 p.m. on June 30, 2015 but they continued to provide vague information via text messages to the landlord as to when they would be finished with the unit until they left on July 1, 2015.

The tenants said that they could not return, after they had moved out of the rental unit, to complete a move out inspection because they had moved to a new community and it was not possible for them to return to dispute address.

The landlord seeks compensation in the amount of \$70.00 for overholding the rental unit for 2 days beyond the agreed upon end of tenancy of June 30, 2015 at 1:00 p.m. The tenants agree they overheld the property for 1 day.

The relevant text messages between the parties show that at 2:12 p.m. on July 1, 2015 the tenant wrote: "Ok then you can clean it and we still get our damage deposit back because you NEVER did a walk around when we moved in. You don't pay us it back and you will be made to pay double the deposit" [reproduced as written]. At 2:14 p.m. she continued: "Ask the tenancy branch if you don't believe me. We didn't want to leave it in a mess for you which I why we're still here" [reproduced as written].

At 4:25 on July 1, 2015 the tenants sent another text to the landlord and asked the landlord to be patient with them because they had to "run out and insure our RV" and that they were on their way back to the rental unit to "finish up".

The landlord also claims a total of \$347.50 for interior and exterior clean up and the removal of refuse and furniture left behind by the tenants. The landlord's photographs show cigarette butts left in the porch railing; a dirty oven and stove; crayon markings on the fridge and walls of the rental unit; several cupboard with food and household supplies; uncleaned drawers and cupboards; garbage and cardboard boxes outside and a desk and portable fireplace.

The tenants submit that they had cleaned the rental unit and that the pictures submitted by the landlord do not reflect the condition the rental unit was in when they left the property. They testified that there was no food left behind and they had had help cleaning the unit before they vacated the unit.

The landlord also states that the tenants were required under the tenancy agreement to take care of the yard during the tenancy but they had failed to do so and so she had to hire someone to cut the grass; weed; and clean up garbage. The landlord submitted receipts for this work on 5 occasions beginning November 23, 2014 with the final time being July 1, 2015 when the tenants vacated the unit. I note the July 1, 2015 receipt was for \$30.00.

The landlord seeks compensation for the unpaid gas utility bill in the amount of \$528.30. The tenants submit that they were not aware that they were required to pay for the gas utility.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 57 of the *Act* defines overholding tenant as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to allow a landlord to claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

As per the testimony of both parties I accept the tenants overheld the rental unit. While the tenants acknowledge they remained 1 day over the end date of the tenancy, I find, based on the text messages that the tenants failed to vacate the property until well after 1:00 p.m. on July 1, 2015.

Since the agreed upon end of the tenancy was 1:00 p.m. on June 30, 2015 I find the tenants occupied the rental unit for 1 full day and a portion of a second day beyond the end of the tenancy. As such, I find the landlord is entitled to 2 days of overholding.

The landlord has claimed \$70.00 for overholding. However, based on the rent of \$1,050.00 per month and the fact that there are 31 days in July I find the per diem rate for overholding is \$33.87. As a result, I find the landlord is entitled to \$67.74 for overholding.

In regard to the landlord's claim for utilities, I note that the tenancy agreement signed by both parties clearly shows that gas is not included in the rent and that the rental unit had a gas fireplace. As such, I am not persuaded by the tenants' position that they were not aware they were responsible for the payment of the gas utility.

I find the landlord is entitled to recover the cost of gas utility charges during the tenancy. I am satisfied the landlord has adjusted the claim from the bill received to take into deduct the 3 weeks of gas usage after the tenancy ended. I find the landlord is entitled to \$528.30.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

From the landlord's photographic evidence and the text messages I find that the tenants actually confirmed in that they had not cleaned the rental unit as late as 2:12 p.m. on July 1, 2015 that they had not cleaned the rental unit and that the landlord could do it. As such, I find the landlord has established that the tenant's failed to comply with their obligations under Section 37. I am also satisfied the landlord has established the value the losses suffered as a result in the amount of \$347.50 for cleaning inside and outside of the residential property.

In regard to the landlord's claim for yard maintenance, I find that the tenancy agreement does not provide any clarity on who is responsible for yard maintenance during the tenancy. As such, I dismiss this portion of the landlord's claim.

Section 23 of the *Act* requires a landlord to complete a move in condition inspection at the start of the tenancy. Section 24 states that the landlord's right to claim against the security deposit **for damage to the rental unit** is extinguished if the landlord fails to complete such an inspection. [emphasis added]

Section 1 of the *Act* defines a "security deposit" as money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for **any liability or obligation of the tenant respecting the residential property**. [emphasis added]

While I accept the tenant's position that the landlord had extinguished her right to claim against the security deposit for damage to the rental unit, such extinguishment does not preclude the landlord from making a claim for items such as overholding or the non-payment of gas utilities. Therefore, I find the landlord has not extinguished her right to make such a claim.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the text messages submitted, I find the tenants provided the landlord with their forwarding address on July 1, 2015 and as such, the landlord had until July 16, 2015 to file her Application for Dispute Resolution seeking to claim against the deposit. The landlord's Application was received by the Residential Tenancy Branch on July 15, 2015. I therefore find the landlord has complied with Section 38(1) and the tenants are not entitled to double the amount of the deposit.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$993.54** comprised of \$67.74 overholding; \$528.30 gas utilities; \$347.50 cleaning and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$525.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$468.54**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 11, 2015

Residential Tenancy Branch

