



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, MND, FF

This hearing dealt with cross applications. Both parties have filed an application seeking an order for the security deposit and the maximum monetary amount allowable under the Act for \$25000.00. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony. The tenant chose not to dial in and participate on the adjourned date of December 10, 2015. However, the tenant had presented their claim on September 8, 2015 and the landlord was given an opportunity to respond at today's hearing.

The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the parties were in a highly charged yelling match with each making allegations of "liar and fraud" to each other. The parties were more intent on arguing with each other than answering questions or presenting their claim.

Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in making a decision. As this matter was conducted over two separate days and almost 2 ½ hours of hearing time, all issues, evidence and arguments were considered but for the sake of clarity and brevity this decision will not repeat each and every item, instead it will focus directly on the claims as made in each party's application.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on September 1, 2014 and ended on November 14, 2014. Condition inspection reports were conducted at move in and move out. The tenants were obligated to pay \$1175.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$587.50 security deposit and a \$587.50 pet deposit. The landlord stated that he initially felt like he and the male tenant were "soul mates" and would become friends. The landlord stated the relationship quickly deteriorated to the point that the tenants wished to end the tenancy. The landlord stated that he and the tenants agreed that it was to be a month to month tenancy that would require two months' notice by the tenants if they wished to end it.

The landlord stated that on October 19, 2014 the tenants gave him notice that they would vacate by December 31, 2014. The landlord stated that the tenants then changed their mind "and breached our agreement" and moved out on November 14, 2014. The landlord stated that he provided a ½ month's rent reduction in exchange for the male tenant to assist him in building a deck which never occurred. The landlord stated that the tenants seem to change in their demeanour shortly after moving in. The landlord stated that the tenants damaged his furnace so badly that he had to replace it with a new one. The landlord stated that the tenant deliberately damaged it so that they would get a new furnace. The landlord stated that the tenants befriended the neighbor across the street and engaged in a campaign of slander, lies, rumours and threats. The landlord stated that the tenants had friends post disparaging comments on social media to dissuade potential new tenants from moving in.

The landlord stated that the tenants caused him so much grief that he has developed a heart condition from this matter and has caused him to lose substantial earnings. In addition, the landlord stated that he has been unable to rent the unit in part because of the comments posted on social media but also due to his fear of the tenants and that they may cause him further financial loss and seek physical retribution. The landlord stated that the tenants were threatening and aggressive at the move out inspection and that he felt uneasy about bringing up some of the deficiencies during the walk through such as the state of cleanliness in the unit or the damaged thermostat or missing keys for the locks. The landlord stated that his claim could escalate far beyond the limit under the Act but is content to pursue the total value of his claim as \$25000.00.

The landlord has applied for the following:

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| 1.½ Months Rent in Lieu of work not completed by tenant | \$587.50 |
| 2.Loss of Revenue December 2014- August 2015 | \$10,575.00 |
| 3.Replace Thermostat | \$21.27 |

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| 4.Furnace Replacement | \$6261.00 |
| 5.Post Rental Clean Up | \$630.00 |
| 6.Deadbolt replacement and keys | \$199.50 |
| 7.Pain and Suffering | \$6192.12 |
| 8.DRM Enterprises - lost bonus | \$2100.00 |
| 9.Security and Pet Deposit | \$1175.00 |
| 10.Filing fee | \$100.00 |
| Total Claim | \$27,741.39 |

The tenants' testimony is as follows. The male tenant stated that he was ready, willing and able to assist in the building of the deck and that the landlord didn't have the permits in place so the landlord should bear that loss of rent. The tenants stated that the furnace was in such poor condition they are lucky they were not injured in an accident. The tenants stated that when they first turned on the furnace a burning smell arose to which they conducted an emergency shut down as shown to them by the landlord. The tenants stated that the gas shut off valve was faulty and it was not a result of any of the tenants' actions. The tenants' stated that the landlord has tried to blame other tenants for damaging his furnace by filing an application at the Branch, none of which he has been successful.

The tenants stated that the landlord took their safety for granted by having such a poorly running furnace in the property. The tenants stated that it was the landlord that was aggressive, intimidating and threatening to the point where they had to contact the police. The tenants stated that they are fearful of the landlord and what he is capable of. The tenants stated that the landlord required a two month notice to vacate when the Act only requires one. The tenants stated that the landlord essentially forced them out of the unit by his demeanour and are seeking moving costs, compensation for paying for the unit until the end of November, even though they moved out on the 14th of the month.

The tenants also seek the cost of having their mail redirected, the cost to prepare for this hearing, lost wages, and the pain and suffering and risk they faced by living in a home with a furnace "that could blow up". The tenants stated that the male tenant has developed such stress and anxiety from this he has had to wear a heart monitor. The tenants stated that they just wanted to be left alone but the landlord is a very aggressive and intimidating person.

The tenants have applied for the return of both deposits along with the following:

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| 1.Return of Security and Pet Deposit | \$1175.00 |
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| 2.November Utility Costs | \$200.00 |
| 3.November Rent | \$1175.00 |
| 4.Storage Fees | \$238.56 |
| 5.Moving Expenses | \$1160.00 |
| 6.Food Loss in the Fridge | \$239.58 |
| 7.Chrome Cast | \$44.13 |
| 8.Plants and Bin Bags | \$59.93 |
| 9.Mail Redirection | \$21.33 |
| 10.USB Stick | \$11.14 |
| 11.Compensation for moving into a house with so many issues | \$587.50 |
| 12.Loss of wages for having to quit job to deal with stress from this issue | \$3400.00 |
| 13.Pain and Suffering and Endangerment | \$10,587.83 |
| 14.Loss of Internet caused loss of employment | \$6000.00 |
| 15.Filing fee | \$100.00 |
| Total Claim | \$25,000.00 |

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, **the party claiming the damage or loss bears the burden of proof.** The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlord's claims and my findings around each as follows.

1. ½ months Rent for September 2014 - \$587.50.

Based on the testimony of both parties, I find that the landlord and tenant came to an agreement that the tenant would be entitled to a half a month's rent reduction for assisting the landlord in helping him build a deck. Both parties agree that the work was not conducted. As the work was not conducted, the tenant was still obligated to pay the rent as agreed upon in their tenancy agreement. Based on the above I find that the landlord is entitled to \$587.50.

2. Loss of Rent from December 1, 2014 – August 31, 2015 - \$10,575.00.

The landlord stated that the tenant did not provide proper notice and that they posted slanderous remarks on social media that prevented him from trying to rent the unit. The

parties both agreed that the tenancy was on a month to month basis and not a fixed term. In addition, the landlord gave testimony that on October 20, 2014 the tenant gave him written notice to end tenancy on December 31, 2014. Regardless that the landlord requested a two month notice to end tenancy, a tenant is only required to provide one month's notice to end tenancy in accordance with the Act, which I find the tenant did. Also, the landlord gave testimony that he "just stopped advertising" due to posts on social media. The landlord did not mitigate his losses as is required and therefore has not met his obligations under the Act. Based on the above and on a balance of probabilities I dismiss this portion of the landlords claim.

3. Replace Thermostat - \$21.27

The landlord stated that the tenants intentionally damaged the thermostat. The landlord provided a receipt for this claim. The tenants stated that they did not damage the thermostat and that it was a symptom of the larger problem which was the furnace. The landlord has failed to display that the thermostat was damaged due to neglect or recklessness. The landlord has not provided sufficient evidence to support this claim. Based on the above and on a balance of probabilities, I dismiss this portion of the landlords claim.

4. Furnace Replacement - \$6261.00

The landlord stated that the subject tenants are responsible for damaging the previous furnace. The landlord stated that the tenants intentionally damaged it as a way of retribution. The tenants stated that the furnace has been a long and ongoing issue for the landlord. The tenants submitted documentation to reflect that the landlord has made the same claim against previous tenants, none of which were successful. The tenants' stated that they only shut down the furnace as an emergency procedure as told to them by the landlord in an attempt to mitigate damage to the landlord's property. Based on the disputing testimony and documentation provided by the tenants, the landlord has failed to provide sufficient evidence to satisfy me that they are responsible for damaging the furnace. Based on the above and on a balance of probabilities, I must dismiss this portion of the landlords' application.

5. Post Rental Cleanup – \$630.00

The landlord stated that the unit was left very dirty and required him to do the cleaning himself. The landlord stated that at an hourly rate it would have cost far more than his claim but felt the amount sought is fair. The tenants adamantly deny this claim. The tenants stated the unit was left in excellent condition, as per the move out condition inspection report. I agree with the tenants, there is no indication on the report that the unit required any cleaning whatsoever. The landlord has not submitted sufficient evidence to support this claim and I therefore dismiss this portion of his application.

6. Deadbolt replacement and Keys -

The landlord stated that the tenants did not return the keys. The landlord stated that because of their threatening behavior he feared they would come back and damage the unit and replaced the deadbolt lock and keys. The tenants disputed this claim. The tenants stated that there was never any evidence that they would come and threaten him. In addition, the tenants stated that they returned the keys as is reflected in the move out condition inspection report. The move out condition inspection report clearly shows that the keys were returned. The landlord has not provided sufficient evidence to show that the tenants were a threat to return to cause any damage. Based on the above and on a balance of probabilities I dismiss this portion of the landlords' application.

7. Compensation for Pain and Suffering - \$6192.12

The landlord stated that because of this "toxic" relationship he has developed some health problems and is slated to have tests done on his heart. The landlord stated that the tenants have caused him so much grief that the amount sought doesn't begin to address the issue. The landlord stated that he came to the amount by "rounding up" the claim to meet the maximum allowable monetary amount as legislated under the Act.

The tenants stated that they are the ones who in fact have had health related issues occur as a result of this tenancy. The tenants stated that the landlord initiated all of the malice between them and caused them to lose work and opportunities.

I completely accept that this was a very contentious, negative and difficult relationship; however, both parties had a hand in it. The parties are engaged in the legal process that is available to them. The landlord has not provided sufficient evidence that the tenants' actions would justify the amount as claimed and therefore, on a balance of probabilities, I dismiss this portion of the landlords' application.

DRM Enterprises – lost bonuses – \$2100.00

The landlord stated that he was unable to work as a result of the stress he incurred due to this matter and seeks lost bonuses that he would have otherwise made through his company. The tenants renewed their objection to the notion that the landlord is the only one suffering with health problems. The tenants stated that the landlord did not provide any proof of lost job offers or anyway quantify the amount sought. I agree with the tenants, the landlord has not provided any documentary evidence of lost job offers, missed quotas or lost bonuses to support this claim. Based on the above and on a balance of probabilities I dismiss this portion of the landlords' application.

I will address the issue of the deposits at the end of this decision. Having addressed the landlords' claim, I find that he is entitled to \$587.50.

I now address the tenants claim and my findings as follows. The tenants have filed for the return of their deposits but as stated above I will address the security and pet deposit claim made by each party at the conclusion of this decision.

1. November Utility Costs - \$200.00

The tenant stated that since she they left in the middle of the month, they shouldn't be responsible to pay the utilities. The landlord stated that the utilities were the tenants' responsibility as per the tenancy agreement. The tenants vacated the unit on their own volition on November 14, 2014 even though they had paid the rent for the month of November. There was no requirement for them to leave early; accordingly the tenants are responsible for the utility costs for that month as per the tenancy agreement. I dismiss this portion of the tenants' application.

2. November Rent – \$1175.00

The tenant stated that since they vacated on November 14, 2014 they shouldn't have to pay a full month's rent. The tenant further stated that since it was such a "negative" environment the tenants' should be given a month's compensation. As stated in the previous claim, the tenants left on their own, and not as a result of the landlord. The tenants have failed to provide sufficient evidence that they could no longer reasonably live there and I therefore dismiss this portion of their application.

3. Storage Fees - \$238.56

The tenants stated that the landlord promised them storage for their items. The tenants stated that one day after they moved in the landlord told them to remove their items as it looked like "hoarders" were occupying the space. The landlord stated that storage was never discussed or included with the rent. The landlord stated the tenants had copious amounts of items and that it was a safety issue as to why he wanted them to remove items. Based on the landlords disputing testimony and the tenancy agreement that has no storage clause or arrangement listed, I hereby dismiss this portion of the tenant's application.

4. Moving Expenses - \$1160.00

The tenants stated that the landlord should be responsible for the cost of moving. The tenants stated that all the allegations made against them forced them to move. The tenants stated that the amount is a quote and not the amount they actually incurred. The landlord stated that the tenants gave him notice and doesn't understand why he would have to pay for it. The tenants have not provided sufficient evidence to show that

they were in dire need to move. In addition, the costs incurred were costs they would have to pay as a result of them giving notice in any event. Based on the above and on a balance of probabilities, I dismiss this portion of the tenants' application.

5. Food Loss in the Fridge - \$239.58.

The tenant stated that when she went away for a few days she returned to find that all of her food in the refrigeration section was frozen. The tenant stated that she "assumed" the landlord went into the unit to turn the fridge up to its highest setting. The landlord disputes this claim. The tenant did not provide sufficient evidence to support this claim and I therefore dismiss this portion of the tenants' application.

6. Chrome Cast Streaming System - \$44.13

The tenant stated that the landlord requested that she use this video streaming device. The landlord stated that he paid the tenant the amount plus five extra dollars for gas. The tenant stated that "he might have paid me but I can't quite remember". Based on the unclear testimony of the tenant I dismiss this portion of the tenants application.

7. Plants and Bin bags - \$59.93

The tenant stated that she purchased some plants to "spruce up the look" of the property and bought bin bags for leaves and trash. The landlord stated that he did not ask the tenant for these items and she's free to take them back. The tenant stated that the plants were practically dead when she moved out. The tenants' have not provided sufficient evidence to support this claim that they incurred this cost as a result of the landlords' actions. Based on the above and on a balance of probabilities I hereby dismiss this portion of their application.

8. Mail re-direction \$21.33

The tenants stated that because they didn't trust the landlord, they decided to have their mail re-directed. The landlord stated that he at no time tampered with or withheld their mail. Based on the disputing testimony of the landlord and the lack of evidence to support this claim, I dismiss this portion of the tenants' application.

9. USB Stick – \$11.14

The tenants stated they purchased USB sticks to submit digital evidence for this hearing. The Act does not provide the jurisdiction for an Arbitrator to deal with costs arising from litigating ones claim and accordingly; I dismiss this portion of the tenant's application.

10. Compensation for living in a house with so many issues - \$587.50

The tenants stated that they should be entitled to this amount as the furnace was not functioning properly and having to deal with the landlords' erratic behavior. The landlord stated that the home underwent a \$200,000.00 renovation and he was very upset at the notion that anything in the home wasn't "perfect". The tenants have failed to show that they are entitled to compensation as is required under Section 67 of the Act. Based on the above and on a balance of probabilities I dismiss this portion of the tenants' application.

11. Loss of Wages for having to deal with the stress from this issue - \$3400.00.

The male tenant stated that due to this tenancy, he developed a heart condition that required him to wear a heart monitor. The male tenant stated that he had to quit working which caused him to lose \$3400.00 in wages. The landlord disputes this claim. The landlord renewed his argument that he is the one that suffered the greatest loss financially and physically due to this situation. As outlined in other claims, the male tenant failed to provide documentation to support the loss of wages and I therefore I must dismiss this portion of the tenants application.

12. Pain and Suffering and Endangerment - \$10,587.83

The tenants stated that due to the stressful and dangerous situation with the furnace, they should get the amount sought and more. The tenants stated much as the landlord did, that the amount in the claim doesn't begin to deal with the stress, anxiety and difficulty of the situation. However, as I have already outlined in the landlords claim, both parties were exercising their legal right by using this process and that does not entitle them to compensation as claimed. The tenants have not provided sufficient evidence that the landlords' actions would justify the amount as claimed and therefore, on a balance of probabilities, I dismiss this portion of the tenants' application.

13. Loss of Internet that caused loss of employment- \$6000.00

The female tenant stated that she made \$72000.00 per year in 2012 and 2013 and provided a pro-rated amount for the time she dealt with this matter. The landlord disputes this claim. The landlord stated that she never worked while living in his suite. The tenant has failed to show that she did in fact incur loss of wages. As I have stated in the landlords' claim for loss of wages, there is no documentary evidence to support this claim and I therefore dismiss this portion of the tenants' application.

As neither party was completely successful in their application I decline to make a finding in regards to the filing fee and each party must bear that cost.

The landlord has established a claim for \$587.50. I order that the landlord retain the \$587.50 security deposit in full satisfaction of the claim. The tenants are entitled to the

return of the pet deposit. I grant the tenant an order under section 67 for the balance due of \$587.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is entitled to retain the security deposit. The tenants are entitled to the return of the pet deposit for which they are granted a monetary order of \$587.50

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 10, 2015

Residential Tenancy Branch

