



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for unpaid rent, for loss of rent, for compensation under the *Residential Tenancy Act* and the tenancy agreement, for damage and cleaning of the rental unit, for an Order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The Tenant, C.L. appeared on his own behalf and as agent for the other Tenant, L.A., whom he identified as his spouse. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Is the Landlord entitled to retain the security deposit?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord testified that this tenancy was to begin on December 1, 2014 however the Tenants requested and were permitted to move in shortly before that. Monthly rent was payable in the amount of \$1,600.00 per month and the Tenants paid a security deposit of \$800.00.

The Landlord testified that she attempted to do a move in condition inspection report on three separate occasions. She stated that the Tenants moved in on the last week of November while the Landlord was at work. The Landlord testified that she agreed to the Tenants request to move in early and the Tenants agreed to do a "walk through" and it didn't happen. She was not able to provide a date. She further testified that she attempted on a second occasion to do a "walk through" "a couple days later" and she said the Tenant, C.L. was moving his business and was too busy to do so. She stated that the parties agreed to do a "walk through" on the first Saturday in December 6, 2014. The Tenant C.L. stated that he was too busy as it was his son's birthday and C.L.'s father was in town.

The Landlord testified that the parties agreed that there were no outstanding repairs to be done by the Landlord and the Landlord acknowledged that the rack in the dishwasher could be replaced, there were scuffs on the wall and grout missing between the tiles, and there were patched holes in the second bedroom, some marks on the carpet in the loft and that the dining room could use some paint.

The Tenants vacated the rental property on May 31, 2015. The Landlord testified that the Tenants left without performing a move out inspection as they just "left". She stated that she found out that they had moved as she saw them with a truck moving out their belongings.

The Landlord testified that the Tenants came to speak to her at the beginning of May and advised her that they were not able to pay rent as the Tenant, C.L. was using drugs and was not able to work. The Landlord further testified that the Tenants decided to separate and that the Tenant, L.A. paid "her half of the rent", \$800.00 in addition to \$50.00 in utilities.

The Landlord stated that the outstanding amount of rent for May 2015 was \$210.00 and as this remained unpaid she issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on dated May 24, 2015, indicating the amount of \$210.00 was outstanding for rent as of May 1, 2015 (the "Notice").

Although the Tenants did not give the Landlord adequate notice, and she did not rent the unit for June 2015, she confirmed that she was not seeking compensation for the June rent.

The Landlord testified that the Tenants failed to clean the rental unit and as such the rental unit required significant cleaning at the end of the tenancy.

Introduced in evidence by the Landlord was a Monetary Orders Worksheet dated July 3, 2015 in which the Landlord indicate she is claiming \$2,155.36 for the following:

Removal of items left by the Tenants in the property and in the garage	\$678.70
Landlord's claim for 10 hours cleaning at \$40.00 per hour	\$400.00
Lawn work of 7 hours at \$15.00 per hour	\$105.00
Outstanding utilities	\$761.66
Unpaid rent as per Notice	\$210.00
Total claimed	2,155.36

The Landlord testified that her housecleaner charges her \$50.00 per hour and as such she felt that an hourly rate of \$40.00 per hour for her time spent cleaning was fair. Introduced in evidence by the Landlord was a detailed list of the tasks she was forced to do as a result of the condition of the rental including the following:

- Swept, vacuumed all floors of interior of house;
- Cleaned out central vacuum system;
- Cleaned out fire place insert;
- Vacuumed all floors/furnace vents;
- Cleaned oven, fridge, microwave and dishwasher.

The Landlord stated that the vacuum system was clogged with toys and debris that the Tenants attempted to vacuum up.

The Landlord also claimed that there was so much garbage left by the Tenants that it took her 12 hours to remove all of the refuse. She stated that the truck which removed the garbage was a ½ ton pick-up truck with a rack, and the truck was so full of garbage that it was higher than the rack by a foot.

The Landlord further testified that the Tenants left most of their furniture although she says that the Tenants tried to have a garage sale the week before and whatever didn't sell was simply left.

She described the upstairs loft as "filthy". She stated that the Tenants had three children and as a result the walls were caked with food and hand prints and there was "caked on milk" all over the floor from "babies walking around with bottles". She said that she had to spray and soak the floors continually to try to scrape the milk off the floor.

She also claimed that the Tenants left dirty diapers "everywhere". She stated that the garage was full of bags of dirty diapers as well as bags of food with maggots living on the food.

The Landlord also testified that the rental home is in a rural area and advised that composting was mandatory in the area; apparently the Tenants failed to empty the compost from a bin on the back deck such that the food on the back deck was covered in maggots and flies.

The Landlord testified that part of the tenancy agreement was that the Tenants were to care for the lawn. She testified that the property sits on two acres and the living area is $\frac{1}{4}$ of an acre. She further testified that the Tenants did not do any yard work during the time they lived there. The Landlord testified that the outdoor area includes established garden beds that needed to be weeded and the gardens were completely overgrown as the Tenants did not do any weeding. She stated that at the end of the tenancy the lawn was mowed and edged and the garden beds were weeded the later of which took 6 hours as well as $\frac{1}{2}$ hour to remove the garden waste.

The Landlord also sought the sum of \$761.66 for unpaid hydro. She testified that the Tenants were paying approximately \$80.00 per month on an equal payment plan. She said that when the Tenants first moved in the hot tub was not hooked up. Apparently in December 2014 the Tenant, C.L., spoke to the Landlord about his wish to hook up the hot tub. She said that she spoke to him about the potential for increased water and hydro costs and he assured her he would pay this amount. She further testified that in January she spoke to C.L. as she was observing that the consumption was much higher than the equal payment plan. According to the landlord, C.L., assured the Landlord that he would "catch up with that".

The Tenant, C.L., disputed the condition of the rental unit and stated that there was "a little bit of mess". In response to the Landlord's claim about garbage left by the Tenants he claimed the Landlord told him leave his garbage outside because she was upset with him and he admitted it was all piled up at the front door. He said that there was garbage in the garage when they move in and they simply "added to that as well".

The Tenant disputed the \$678.70 claimed by the Landlord for removal of garbage. He testified that the Landlord's husband was the owner of the company, "F.C." and as such he argued that this amount was exaggerated. Again, he admitted that there was some garbage left behind but suggested that \$300.00 was reasonable. Further, he stated that he felt it was one of those "mutual things" as he said they "had to clean the place up when they moved in" and he thought if they left some garbage the Landlord would take care of it.

The Tenant disputed the \$40.00 per hour cleaning charge of the Landlords as well as the 10 hours claimed. He stated that he did not shampoo the carpet upstairs in the loft when he moved out. He claimed to have mopped the floors, wiped the cupboards and the fridge and testified that he spent hours cleaning. He said that other than the stuff outside (the garbage) there was no cleaning required whatsoever.

The Tenant also disputed the \$105.00 claimed by the Landlord for yard maintenance. He stated that Landlord's son came over and mowed the lawn during the tenancy. He also stated that when the tenancy ended it was "fall and there were leaves everywhere". When I brought to his attention that the tenancy ended in May, he responded as follows, "just charge me, I can't remember what was going on at that time".

The Tenant also disputed the \$761.66 claimed by the Landlord for outstanding utilities. He stated that they agreed and signed documents to confirm their agreement that the Tenant's portion would be \$120.00 per month. The document to which he referred was a hand written addendum to the tenancy agreement. The Tenant also claimed that the couple who lived next door to the rental unit were home all the time and used less electricity than the amount he was charged.

The Tenant testified that despite the addendum he paid the Landlord \$900.00 for electricity which was more than the \$120.00 agreed upon sum because of the hot tub's increased electricity consumption. Finally, he submitted that at no time did the Landlord request payment of the "unpaid amount" until he sent her a registered mail letter requesting return of his damage deposit.

In response to the Landlord's claim that the Tenant refused to participate in the move in condition inspection, the Tenant stated that there "never was any discussion" for such an inspection and that in any case they waited for he to come to the rental unit and it wasn't the Tenants job to chase her around.

The Tenant stated that the Landlord did not ask to perform a move out condition inspection. He claimed that she asked them to leave and they left.

The Tenant testified that he provided the Landlord with his forwarding address by registered mail on June 4, 2015.

In brief reply the Landlord testified that she received the Tenants' forwarding address on June 22, 2015.

The Landlord applied for dispute resolution on July 3, 2015.

The Landlord confirmed that the Tenants paid \$960.00 in hydro in December 2014, January, February, March and May 2015.

The Landlord testified that she offered the Tenants to do a move out condition inspection and she stated that she expected them to leave at the end of the month. She further stated C.L. had told her that he was moving and that he would come and talk to her once they packed up. The Landlord testified that instead of coming to talk to her as he promised, C.L. "just left". The Landlord stated that L.A. was still at the house cleaning and she confirmed with L.A. a time to do the inspection, and when she came back to the rental, neither Tenant was there and the Landlord never saw either one of them again.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

There was no evidence to show that the Tenants had agreed, in writing, that the Landlord could retain any portion of the security deposit.

The Landlord suggested she was unable to perform a move in condition inspection as the Tenants refused her requests for such an inspection. She stated that she allowed the Tenants to move in early and when she attempted to do the inspection they continually refused her requests. The tenancy then continued until the end of May 2015.

The Landlord further testified that the Tenants refused her attempts to set a time for a move out condition inspection.

Section 16 of the *Residential Tenancy Regulation* provides as follows:

Scheduling of the inspection

- 16** (1) The landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection.
- (2) A condition inspection must be scheduled and conducted between 8 a.m. and 9 p.m., unless the parties agree on a different time.

Two opportunities for inspection

- 17** (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
- (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
 - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

There was no evidence that the Landlord complied with section 17(2)(b) by providing the Tenants notice of the second opportunity for a move in, or move out condition inspection in the approved form.

By failing to perform incoming or outgoing condition inspection reports in accordance with the Act, the Landlord extinguished her right to claim against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the Act. The Landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to Residential Tenancies. Therefore, I find the Landlord has breached section 38 of the *Act*.

The security deposit is held in trust for the Tenants by the Landlord. The Landlord may only keep all or a portion of the security deposit through the authority of the Act, such as an order from an Arbitrator, or with the written agreement of the Tenant. Here the Landlord did not have any authority under the Act to keep any portion of the security deposit; additionally, she had extinguished her right to claim against the deposit by failing to perform the inspections in accordance with the *Act* and the *Regulations*. Therefore, I find that the Landlord is not entitled to retain any portion of the security deposit.

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **\$1,600.00**, comprised of double the security deposit (2 x \$800.00).

As noted, the Landlord claimed the sum of \$2,155.36 which was itemized on her Monetary Orders Worksheet.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. that the other party violated the *Act*, regulations, or tenancy agreement;
2. that the violation caused the party making the application to incur damages or loss as a result of the violation;
3. the value of the loss; and,
4. that the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants did not clean the unit as required by the *Residential Tenancy Act*. The Tenant, C.L., conceded that he did not remember what the yard looked like on the date that he moved out.

C.L. also testified that the carpets were not steam cleaned when the Tenants left, as required under the Act and the tenancy agreement.

I accept the Landlord's evidence that the cost of removing the Tenant's garbage was \$678.70. While it may have been the case that the Landlord had a personal relationship with the owner of the company which moved the garbage, I do not find that this impacts the amount claimed, or proves it was inflated. The Tenant testified that he believed that she would simply move what they had left as he and his spouse had cleaned the rental when they moved in. I find this to be an admission that the Tenants left garbage which required removal and which cause the Landlord to incur a loss. I award the Landlord the full **\$678.70** claimed.

I accept the Landlord's evidence as to the amount of time required to clean the rental unit. I do not, however, find that her hourly rate of \$40.00 is reasonable. A more reasonable rate is \$25.00 and I award her compensation for 10 hours at his rate for a total of **\$250.00**.

I also accept the Landlord's evidence that the lawn and gardens required maintenance. Notably, the addendum to the residential tenancy agreement specifically provided that the Tenants were responsible for the care of the lawn and gardens. The Tenant conceded that he did not recall the condition of the yard when the tenancy ended and in fact initially claimed it was in the fall. Accordingly, I award the Landlord the **\$105.00** claimed for lawn and garden maintenance.

The Tenant did not dispute the **\$210.00** claimed for outstanding rent and accordingly I award the Landlord compensation for this amount.

While the parties signed an addendum which indicated the current electrical charge of \$120.00 the addendum provided as follows:

1. *Tenant is responsible for payment of ½ utilities—hydro, oil (entire amount), water.*

iii) *hydro currently \$120.—per month & will be increased per household (A&B) decreased as per bills.*

The addendum does not set or limit the Tenant's contribution; it merely indicates the current amount. As such, I find that the parties agreed the Tenants would be responsible for ½ of the utilities; and, I accept the Landlord's evidence that the Tenant's share of the outstanding utilities is **\$761.66**. Accordingly, I award her compensation in this amount.

In total find that the Landlord has established a total monetary claim of \$*comprised of the following:

Removal of Tenant's garbage	\$678.70
Compensation for time Landlord spent cleaning	\$250.00
Lawn and garden maintenance	\$105.00
Outstanding utilities	\$761.66
Outstanding rent	\$210.00
Total allowed	\$2,005.36

As the Tenants are entitled to return of double their security deposit in the amount of **\$1,600.00** this amount is to be offset against the amount awarded to the Landlord such that the Landlord is entitled to a further **\$405.36**.

Success of this application was divided such that I decline the Landlord's request for recovery of the filing fee.

Accordingly, I grant the Landlords a Monetary Order under section 67 for the sum of **\$405.36**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord is granted a Monetary Order in the amount of **\$405.36**.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 14, 2016

Residential Tenancy Branch

