



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

LANDLORD: MND, MNR, MNDC, MNSD, FF
TENANT: MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking a monetary order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, for damage to the unit, site or property, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of the security deposit, for compensation for loss or damage under the Act, regulations or tenancy agreement, to recover the security deposit and to recover the filing fee.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on August 11, 2015, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by registered mail on August 24, 2015, in accordance with section 89 of the Act.

The Landlords and Tenants both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so, how much?
2. Are the Landlords entitled to compensation for damages and if so how much?
3. Is there loss or damage to the Landlords and if so how much?
4. Are the Landlords entitled to compensation for the loss or damage and if so how much?
5. Are the Landlords entitled to retain the Tenants' deposits?

Tenant:

1. Are the Tenants entitled to recover the security deposit?
2. Is there a loss or damage to the Tenants and if so how much?
3. Are the Tenants entitled to compensation for the loss or damage and if so how much?

Background and Evidence

This tenancy started on August 15, 2007 as a fixed term tenancy with an expiry date of August 14, 2008 and then continued on a month to month basis after August 14, 2008. Rent was \$1,600.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$800.00 on August 15, 2007. The Tenant said there were no condition inspection reports completed for this tenancy. The Landlord said there were no condition inspection reports completed as the rental unit was new and the Tenants were the first occupants. The Tenants' Advocate said the unit was empty for a few months prior to the tenancy and there was water damage to the unit due to a faulty pump.

The Landlord said she was acting for her parents so she may not have all the information about the tenancy. The Landlord said they issued a 2 Month Notice to End Tenancy for Landlord's Use of the Property on May 5, 2015 with an effective vacancy date of July 1, 2015. The Tenants' Advocate said the effective vacancy date is incorrect so the Notice is invalid. The Landlord continued to say they kept the Tenants' security deposit and have made an application for the following:

1. To retain the security deposit for damage to the rental unit in the amount of \$800.00
2. The Landlord said she is claiming \$1,000.00 for repairs to the tub and bathroom. The Landlord said there are receipts but the receipts were not sent in with the application or evidence package.
3. The Landlord continued to say the painters charged them \$600.00, but the Landlord has not received their invoice as of yet so it is not in the evidence.
4. Further the Landlord said they sent \$300.00 to hire cleaners to clean the unit as it was in poor condition at the end of the tenancy. The Landlord said she did not send the paid receipt in with the evidence.
5. As well the Landlord said they hired a company to power wash the exterior of the rental unit for \$850.00 and they are claiming this amount but did not send the paid receipt in with the evidence package.

The Landlord said their total claim is for \$2,800.00 plus the filing fee of \$50.00.

The Tenants said they moved out of the rental unit on July 1, 2015 and gave the Landlord their forwarding address in writing on August 4, 2015 by letter from their Advocate. The Tenants said there was no move in or move out condition inspection reports completed. The Tenants said they have not received their security deposit back. The Tenants' Advocate said the Tenants tried to resolve this issue in August, 2015 but the Landlords' did not respond to them so the Tenants have made the following application:

1. The return of the Tenants' security deposit in the amount of \$800.00. The Advocate said the Landlord did not do condition inspection reports so the Landlord cannot claim against the security deposit for damage.
2. The Advocate said the Tenants have received their July, 2015 rent of \$1,600.00 back so the Tenants are withdrawing this amount from their claim.
3. The Advocate continued to say that the Landlord issued a 2 Month Notice to End Tenancy for the Landlord's use of the Property therefore the Landlord is required to compensate the Tenants the equivalent of one month's rent or \$1,600.00. The Advocate said the Landlord has not done this and the Tenants are requesting \$1,600.00 in compensation as per the Act.
4. Further the Advocate said the Tenants are requesting \$5,709.83 in over payment of hydro bills. The Advocate said this is a result of the Tenants paying the full Hydro bill for the entire tenancy. The Advocate said the tenancy agreement states the Tenants are responsible for all the hydro if the upper unit is unoccupied, but if the upper unit is occupied the Tenants are only responsible for $\frac{1}{4}$ of the hydro bill. The Advocate said the upper unit was occupied on February 1, 2011, but the upper unit tenants did not pay any part of the hydro bill from February 1, 2011 to July 1, 2015 when the Tenants moved out of the unit. Therefore the Advocate said the Tenants are claiming overpayment of the hydro in the amount of \$5,709.83. The Advocate said the Tenants calculated the total hydro payments from February 1, 2011 to July 1, 2015 at \$7,613.11 and according to the tenancy agreement the Tenant should have only been responsible for $\frac{1}{4}$ of that bill in the amount of \$1,903.28. As the Tenants paid the full hydro billings the Advocate said the Tenants have over paid by \$5,709.83. The Tenants are now requesting to recover this overpayment of utilities. The Advocate submitted the tenancy agreement with the hydro sharing clause in it and all the hydro invoices to support the Tenants calculations.
5. In addition the Tenants are requesting \$1,600.00 for loss of quiet enjoyment due to the upper tenants causing loud noise due to domestic disputes and partying. The Tenants said they requested help from the Landlords but nothing was done. This situation worsened and on April 15, 2015 the upper tenant struck the Tenant's son and the Police were called. No charges were filed but the Tenants feel the Landlords' neglect resulted in this incident.
6. The Advocate also requested the Tenant recover the filing fee of \$100.00 if they are successful.

The Landlord said she is willing to return the Tenants' security deposit and the \$1,600.00 compensation but it is her understanding the lower unit paid the hydro and the upper unit paid the gas, therefore the Landlord believes the Tenants are responsible for the full hydro costs. The Landlord said she does not agree with the Tenants' claim for hydro overpayments. The Landlord continued to say she did not have any evidence to support her claims of how the utilities were to be shared. The Landlord said her mother told her that was the arrangement on the utilities. Further the Landlord said they have paid the last hydro bill in the amount of \$334.79 which was overdue in July 2015.

Further the Landlord said she was not told and was not aware of the issues between the upper and lower tenants. The Landlord said she has just become involved with this dispute as her mother normally handled the rental unit.

The Tenants' Advocate said the Landlord's claims for damage are not valid as the tenancy was over 8 years and so the damage the Landlord is claiming is normal wear and tear or functional obsolescence. The Advocate said RTB policy guidelines say rental unit require painting every 4 years and tenants are allowed to put holes in walls to hang things unless the Landlord specifies in the tenancy agreement how hanging are to be done. The Advocate said the Landlord did not specify how hangings were to be done and the unit has not been painted since the start of the tenancy. As well the Tenants said they cleaned the rental unit and had the carpets shampooed at the end of the tenancy. The Tenants said the carpet cleaning receipt is in the evidence package. The Advocate said the Landlord has not provided any evidence to support their claims and their claims are covered by normal wear and tear. As well the outside cleaning of the rental unit is the responsibility of the Landlords not the Tenants.

Both parties submitted photographs of the rental unit to support the condition of the unit at the end of the tenancy. The Tenants said they cleaned the unit and it was left in good condition. The Landlord said the unit was in poor condition at the end of the tenancy. The Advocate said no move out condition inspection report was completed at the end of the tenancy.

In closing the Tenants' Advocate said the Tenants' overpaid the hydro utilities, the unit was left in good condition, the Tenants should get their security deposit back and the Landlord did not intervene with the dispute with the upper tenants therefore the Tenants lost their quiet enjoyment of their rental unit. The Advocate said the Tenants are justified in claiming \$5,709.83 in overpayment of hydro, \$1,600.00 in compensation for the 2 Month Notice to End Tenancy, \$1,600.00 for loss of quiet enjoyment of the unit, the return of their security deposit of \$800.00 and to recover the filing fee of \$100.00. The Advocate said the Tenants are claiming \$9,803.83. The Advocate continued to say that this has been very stressful on the Tenants.

The Landlord said in closing that they are will to repay the security deposit and compensation for the Notice to End Tenancy, but they do not agree with the Tenants claims for overpayment of hydro because the hydro bills were the lower Tenants responsibility. As well the loss of quiet enjoyment was not told to the Landlord so she

could not do anything. The Landlord said that after the last incident between the tenants she did talk to the upper tenants about their behaviour. The Landlord apologized to the Tenants for any stress they have caused them.

Analysis

Sections 24 and 36 of the Act say if a landlord does not complete a move in and move out condition inspection report the landlord's right to claim against the tenants security or pet deposit is extinguished. I find the Landlord did not complete a move in or move out condition inspection report therefore the Landlord's claim against the Tenants' security deposit for damage is extinguished. As a result, I dismiss the Landlord's request to retain the Tenants' security deposit.

Section 23 and 35 of the Act say that a landlord and tenant must do move in and move out condition inspections to establish the condition of the rental unit at the start and the end of the tenancy. If this is not done and there is no other acceptable evidence of the condition of the rental unit at the start and the end of a tenancy then the applicant cannot establish the amount of damage or if any damage was done to the rental unit. In this situation the Landlord has not established a base line to determine if any damage was caused by this tenancy. It is true the unit was consisted new, but there was water damage to the unit prior to the tenancy therefore a condition inspection report was required at the start of the tenancy. In determining a claim for damage or loss an applicant **must** establish four things in order to prove the claim. These requirements are:

1. Proof the damage or loss exists.
2. Proof the damage or loss happened solely because of the actions of the respondent.
3. Verify the actual amounts required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant has taken steps to minimize the loss.

Although the Landlord has shown by photographic evidence there was damage to the unit the Landlord has not proven a loss has been established because there is no paid receipts to show the repair work has been done and there are no receipts to verify the actual cost or poss. Consequently I dismiss the Landlords' claims for damage or loss due to lack of evidence to establish the amount of loss or damage and if a loss existed

at the end of the tenancy. I dismiss the Landlord's application for damages to the unit, site or property without leave to reapply.

With respect to the Tenants' application for the return of their security deposit in the amount of \$800.00.

Section 38 (1) of the Act says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and

- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from the Tenants' testimony and written evidence that the Tenants did give the Landlords a forwarding address in writing on August 4, 2015. The Landlord has made an application to retain the security deposit within the time limits but the Landlords have been unsuccessful; I therefore I order the Landlord to return the Tenants' security deposit of \$800.00 forthwith.

In addition I accept the Tenants testimony and the written evidence of the hydro sharing clause in the tenancy agreement which states when the upper unit is occupied the lower tenant is only responsible for ¼ of the hydro bills. I accept the Tenants testimony and evidence that the upper unit was occupied February 1, 2011. As well I accept the Tenants' calculation of the hydro overpayment of \$5,709.83. I also accept the Landlord

has paid the last hydro bill of \$334.79 for time period just prior to July 1, 2015; therefore I award the Tenants $\$5,709.83 - \$334.79 = \$5,375.04$ for overpayment of the hydro costs.

Further I accept that the Tenants quiet enjoyment of the rental unit was compromised by the upper unit tenants specifically during the incident on April 15, 2015 when the Tenant's son was struck by one of the upper unit tenants. I accept the Tenants testimony that they requested assistance from the Landlord with the issues of the upper unit tenants and the Landlords did not intervene. Consequently I find that because of the Landlords' inaction to resolve the issues between the upper and lower tenants the lower Tenants' quiet enjoyment of the rental unit was compromised. I award the Tenants \$1,600.00 as compensation for loss of quiet enjoyment of their rental unit because of inaction of the Landlords when requested to deal with tenant issues.

A monetary order has been issues to the Tenants for the following:

Return of the Security deposit	\$ 800.00
Compensation for Notice to End Tenancy	\$ 1,600.00
Loss of Quiet Enjoyment	\$ 1,600.00
Recover of overpayment of Hydro	\$ 5,375.04
Recover filing fee	<u>\$ 100.00</u>
Total	<u>\$ 9,475.04</u>

Conclusion

The Landlord's application for damages and to retain the Tenants' security deposit is dismissed without leave to reapply.

A monetary order has been issued to the Tenants' for \$9,475.04.

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: January 12, 2016

Residential Tenancy Branch

