



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, SS, 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 two agents for the landlord; both tenants; their advocate; and their witness.

During the hearing the landlord confirmed that she had received a monetary order from a previous hearing for rent and parking fees for the month of June 2015. As a previous decision has been made on that claim I find the matter of rent and parking fees for the month of June 2015 is *res judicata*.

Res judicata is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgment on the merits has been made; and the involvement of the same parties.

As such, I decline to adjudicate the landlord's claim for these amounts and amend the landlord's Application to exclude the claim for rent and parking fees for the month of June 2015.

In regard to the landlord's request for a substituted service order, the landlord clarified that they were looking for the order because the tenants had not provided them with a forwarding address and they were not able to serve the tenants with the monetary orders they had previously received.

The tenants submitted that they had purchased mail forwarding services from Canada Post when they moved of the rental unit and they have just renewed the service. The tenant confirmed that the landlord may use the rental unit address as the forwarding address of the tenants for the purpose of serving any required documents.

Based on the provision of this service address by the tenants I find the landlord does not require an order to serve the tenants with any documents in a manner that is not allowed under the Act because they have a forwarding address provided by the tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for losses suffered as a result of the tenancy; 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, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following relevant documents:

- A copy of a tenancy agreement signed by the landlord's agent and the female tenant on October 15, 2008 for a month to month tenancy beginning on October 15, 2008 for the monthly rent of \$750.00 due on the 1st of each month with a security deposit of \$375.00 paid on September 22, 2008;
- A copy of a tenancy agreement signed by the landlord's agent and both tenants on September 1, 2014 for a month to month tenancy beginning on August 1, 2014 for a monthly rent of \$792.00 and parking of \$55.00. The agreement stipulates that the security deposit paid on September 22, 2006 applies to this new tenancy;
- A Condition Inspection Report recording the condition of the rental unit at the start of the 1st tenancy and at the end of the 2nd tenancy. While the female tenant signed the report acknowledging the condition at the start of the tenancy, the landlord testified that a move out condition inspection was not scheduled with the tenants;
- Copies of invoices for carpet cleaning; an extra garbage pick-up; and for tire removal as well as a ledger recording charges for cleaning the unit plus fridge and stove and for painting the living room; and
- Several photographs that the landlord submitted that includes pictures of the interior of the rental unit; the parking spaces; and common garbage bin area taken after the tenants had vacated the rental unit.

The tenants submitted into evidence several photographs and typewritten statements from themselves and several witnesses. In the statements the tenants agreed that they did not have time to have the carpets professionally cleaned. The landlord has claimed compensation for carpet cleaning as noted below. The tenants also agree that they did not clean the stove but disagree with the amount of time the landlord claims.

The tenants testified that the photographs they have submitted into evidence were taken at the end of the tenancy after they had moved out. The tenants' photographs show a reasonably clean rental unit including 2 photographs of the interior of a clean fridge.

The landlord submitted that the tenants failed to remove a number of tires from their parking stalls. The tenants submitted that there were a number of tires already there when they started parking. They stated that they had been placed in the stalls to prevent people from hitting the wall while parking. The landlord pointed out that the existing tires did not have rims but the ones they removed had rims. The landlord referred to their pictures. The tenants disputed leaving any tires behind.

The landlord submitted that due to the amount of garbage the tenants left behind they had to have an extra garbage pick-up for their garbage bins from their usual service provider. The tenants submit they did not leave any extravagant amount of garbage behind.

The landlord stated that they knew it was the tenants who had filled the bins because they had security camera footage showing the tenants filling them. The landlord did not serve any footage of these activities as evidence in this proceeding.

The landlord seeks compensation for painting the living room because of foul language that was written on the wall in motor oil. The landlord did refer to their photograph of a wall. The photograph is intended to show a word written in oil and to highlight the lettering the landlord has added typed letters. The tenants submit that they had never written on the wall of the living room and should not be held responsible for repainting since they had lived in the unit for 5 years.

The landlord seeks compensation for cleaning the unit and submitted photographs recording a number of areas requiring cleaning including cupboards with products still in them. As noted above, the tenants agreed they had not cleaned the stove but that they had had friends over and they cleaned everything else including the fridge.

The landlord submitted that the tenant failed to return all keys. The tenants dispute this claim and stated that they returned all keys provided to them.

The landlord seeks the following compensation:

Description	Amount
Carpet cleaning	\$157.50
Junk/tire removal	\$217.89
Additional garbage pick-up	\$45.29
Suite cleaning	\$300.00
Paint living room	\$150.00
Re-keying the rental unit	\$50.00
Total	\$920.68

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.

When two parties provide equally plausible, but different versions of events or the condition of the rental property; the party making the claim has the burden of providing additional or corroborating evidence to substantiate their claim.

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.

As the tenants dispute the landlord's allegations and the landlord failed to schedule a move out condition inspection I find the landlord's evidence to be unreliable.

On the one hand, the landlord says the tenant did not clean out the rental unit and left items behind and on the other hand, they state that the tenants put so much garbage in the common bins that they had to arrange for another pick-up between scheduled pick-ups.

The landlord submitted that they had security camera footage showing the tenants filling the common bins but failed to submit this evidence to confirm. As such, and because the common bins are accessible to all 28 units in the property, I find the landlord has failed to establish it was these tenants that may have filled the bins.

Likewise, I find the landlord has failed to establish that the tenants left any additional tires behind on the property that required discarding on the part of the landlord.

Also, as the landlord failed to schedule a move out condition inspection with the tenants at the end of the tenancy, I find the landlord, regardless of their reasons, failed to provide an opportunity to the tenants to attend a move out condition inspection. As a result and when combined with the tenant's dispute of the condition of the unit when they vacated the unit, I find the condition inspection completed solely by the landlord is not a reliable record of the condition.

As such, with the exception of the costs for carpet cleaning and for cleaning the stove, I find the landlord has failed to establish the tenants should be responsible for any costs associated with junk/tire removal; additional garbage pick-up; suite cleaning; or painting the living room. I dismiss this portion of the landlord's claim.

I find the landlord is entitled to compensation for carpet cleaning and cleaning the stove as the tenants agreed they failed to complete these tasks at the end of the tenancy. I find the landlord has established the value of carpet cleaning in the amount of \$157.50. I agree with the tenant's position that cleaning of the stove would not have taken 6 hours and I grant the landlord 2 hours at \$25.00 as reasonable compensation for cleaning the stove.

As to the need for re-keying, again, I find the tenants have disputed the landlord's assertion that the tenant's failed to return all keys. As such, in the absence of any corroborating evidence of the need to re-key the rental unit, I dismiss this portion of the landlord's claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$232.50** comprised of \$157.50 carpet cleaning; \$50.00 stove cleaning; and \$25.00 of the \$50.00 fee paid by the landlord for this application as they were only partially successful in their claim. I order the landlord may deduct this amount from the security deposit and interest held in the amount of \$376.55 in satisfaction of this claim.

I grant a monetary order to the tenants for the balance of the security deposit and interest held in the amount of **\$144.05**. This order must be served on the landlord. If the landlord fails to comply with this order the tenants 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: March 18, 2016

Residential Tenancy Branch