



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein they sought a Monetary Order for unpaid rent, damage to the rental unit, compensation for loss or damage, and to recover the filing fee.

This hearing occurred over three days. Both parties appeared at all three hearings. The Tenants were represented by counsel. At the April 7, 2016 hearing the hearing process was explained and the participants were asked if they had any questions. Both parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

Both parties submitted substantial documentary evidence in addition to written submissions. 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. Are the Landlords entitled to monetary compensation from the Tenants?
2. What should happen with the Tenants' security deposit?
3. Should the Landlords recover the filing fee paid?

Background and Evidence*LANDLORDS' SUBMISSIONS*

The Landlord R.K. testified on behalf of the Landlords. She testified that the tenancy began September 2013. She stated that the monthly rent was \$1,800.00 and was not raised during the tenancy. The Tenants paid a security deposit and pet damage deposit in the total amount of \$1,800.00. The tenancy ended pursuant to an Order of Possession granted on January 30, 2015; a copy of the January 30, 2015 Decision was provided in evidence (the "January Decision")

The Landlords submitted a Monetary Orders Worksheet upon which indicated they sought compensation in the amount of \$22,870.99 for the following:

Mold inspection	\$559.65
Garbage removal, dog feces removal and dump trips	\$175.00
Bathroom sink installation	\$255.99
Carpet underlay removal and replacement	\$5,450.62
Cabinet repair	\$504.13
Labour for interior painting	\$423.71
Interior cleaning	\$100.00
Landscape restoration	\$316.55
Sink, drywall, hydraulic cement, light switches	\$295.84
Paint and light bulbs	\$217.22
Ferry transportation costs	\$85.75
Ferry transportation costs	\$85.75
Ferry transportation costs	\$102.00
Ferry transportation costs	\$85.75
Keys cut	\$10.05
Reduction in list price of rental home	\$5,000.00
Mortgage rate increase	\$2,002.98
Loss of rental income for four months	\$7,200.00
TOTAL	\$22,870.99

R.K. stated that the Tenants insisted on a mold inspection which cost the Landlords \$559.65 and which in turn they discovered was as a result of localized mold caused by

the unclean manner in which the Tenants kept the rental unit. R.K. stated that their property manager said the place was a mess, but he did not see any mold.

R.K. testified that her husband had an agreement with A.S. that if the mold was a result of the rental home the Landlords would pay for the inspection, and if it was a result of the Tenants they would. R.K. submitted in evidence the invoice and report from the company (pages 56-60 of the Landlord's evidence) which she says confirms it was a result of the Tenants' behaviour.

The Landlords also sought compensation in the amount of \$175.00 for the cost to clean up the rental unit yard, as well as the cost of the amount they paid a landscaper in the amount of \$316.55. R.K. testified that the Tenants were responsible for the upkeep of the yard pursuant to an addendum to the residential tenancy agreement (page 126-128 of the Landlords' evidence) and as such they sought compensation for the landscaping costs they incurred when the tenancy ended.

The Landlords also sought compensation for replacement of the bathroom sink in the amount of \$255.99. The Landlord confirmed that at the time the tenancy began the sink was four years old. In addition the Landlords also submitted a condition inspection report (pages #18A to 18C) which confirmed that the bathroom sink was in good condition at the start of the tenancy. R.K. submitted that the Tenants dropped something into the sink and cracked the bowl. Introduced in evidence at page 88 of the Landlord's evidence submissions was a photo of the cracked sink.

The Landlord also submitted a USB which contained the recording of the parties' discussions during the walk through inspection as well as a transcription of the conversation which occurred on that date. The Landlord submitted that in the recording the Tenants admit to damaging the sink.

The Landlords sought the sum of \$5,450.62 for the cost to replace the carpet and underlay as well as for the removal. The Landlords submitted that the carpets were soaked with urine and despite being relatively new, the underlay looked 30 years old such that the room had to be painted with a stain blocking paint and dried with professional driers to deal with the smell.

R.K. testified that the carpets were replaced in one room in September 2013. She confirmed that the rest of the house had the original carpeting from 2009 such that at the time the tenancy started the carpets were already four years old and at the time the tenancy ended the carpets were six years old.

The Landlords submitted that the kitchen cabinets were also damaged by the Tenants by excessive force, water damage, and the installation child safety devices which were attached by adhesive. R.K. submitted that the cabinet company they consulted about the repairs wished to replace them entirely but because the Landlords could not afford the replacement cost, they were repaired at a cost of \$504.13.

R.K. submitted that in the final walk through (which is evidenced by the transcripts) the Tenants admit to the damage of the kitchen cabinets.

The Landlords also sought compensation for the cost to paint the interior of the home. R.K. testified that the entire interior (except the three bedrooms and one wall in the living room) was repainted in August of 2013, one month prior to the tenancy beginning. Introduced in evidence was a receipt for the labour for painting the house (save and except for the bedrooms) in the amount of \$423.71. The Landlords also sought compensation for \$217.22 for the cost of the paint for painting the three bedrooms and replacement of the light bulbs. R.K. testified that the three bedrooms were painted prior to that in 2012.

The Landlords also sought compensation for \$10.05 for the cost to have keys cut as they claimed the Tenants only returned one key.

The Landlords sought compensation for the cost of their ferry transportation to and from the rental accommodation. The Landlords were advised during the hearing these expenses are not recoverable under the *Residential Tenancy Act* as it is a business choice made by the Landlords.

The Landlords also sought monetary compensation for losses they claim to have suffered related to the sale of the rental home. The Landlords sought compensation in the amount of \$5,000.00 for the "reduction in list price" which they claim was directly related to the tenancy.

The Landlords testified that approximately 11 months into the tenancy they listed the rental property for sale. The Landlords confirmed that initially they were undecided if they were going to move back into the house, or sell it. The house was initially listed in May of 2014 for \$539,900.00. R.K. testified that the property sold July 2, 2015 for \$519,000.00 three days after the tenancy ended.

R.K. testified that the buyers were about to "pull out" of the deal because of the "extreme wear and tear on the home" and their realtor suggested they drop the price by \$5,000.00 in order to secure the deal.

R.K. stated that they did not know the condition of the home when it was first listed as they simply relied on information from their realtor. R.K. also stated that they received information from the realtor, as well as other realtors regarding the condition once the home was on the market.

The Landlords also sought compensation in the amount of \$2,002.98 for “rate increase” from their bank. R.K. submitted that they did not receive their mail from their bank because this “really important piece of mail” filtered through to the Tenants. The Landlords stated that their mortgage came up for renewal during the tenancy and as they did not receive their mail they were unaware of the new rate. R.K. testified that she erroneously believed that her mortgage was for a three year term, not two and admitted that this was her mistake. She also stated that as they did not respond to correspondence from their bank, their mortgage “auto renewed” and that it went from 2.3% to 9.0% and as a “punishment, they charged her this rate for 3 months”.

The Landlords also sought compensation in the amount of \$7,200.00 for “loss of rental income” in the amount of \$1,800.00 per month as she claims the property was not rentable. She confirmed that the home sold three days after the Tenants moved out (February 2015) but the possession date was not until July 2, 2015 (see page 127 of the addendum). R.K. stated that she had “someone” who was interested in renting the property during this time and accordingly sought compensation for these losses.

R.K. testified that the amount spent to repair the rental home was the amount required to put the house to the condition it was when the tenancy began, not some heightened amount to sell the home at a higher rate.

TENANTS’ SUBMISSIONS

The Tenant’s counsel provided written submissions in addition to oral submissions.

The Tenants’ counsel submitted that the Tenants believe the Landlords’ damages claim are exaggerated, the result of normal wear and tear and most importantly were dealt with by mutual agreement reached when the parties did the move out condition inspection.

The Tenants’ counsel submitted that pursuant to this agreement, the parties mutually agreed that the Tenants pet damage and security deposit of \$1,800.00 would cover the cost of any and all damages alleged by the Landlord.

The Tenants' counsel also confirmed that the transcription of the walk through was prepared by the Landlord, confirmed this was an accurate transcription and that the Tenants took no issue with its introduction in evidence.

The transcription of the recording is noted as being just over 29 minutes. For the purpose of this my Decision the following excerpts are reproduced in italics.

[starting at page 131 between 8:05 and 8:33]

R.K.: We don't need to argue we are here to do something and just be rid of each other. Agreed?"

[10:06 the parties go over the notations on the move out condition inspection report.]

[11:56]

R.K. "So...what do you want to do about the deficiencies? We can..."

A.S. "Tell me what you want to do."

R.K. "I still have a bill that you had agreed to pay from the environmental inspection..."

[continuing at page 133 The parties then argue about this inspection; the Tenants alleging that the people hired were friends of the Landlord.]

R.K. "So, would you like to go back to arbitration to collect your security deposit?"

A.S. "What would you like to do?"

[The parties then discuss their options, namely the Landlord obtaining quotes on the cost to fix the deficiencies and going to arbitration, or resolving matters by agreement.]

A.S. "Listen, I'm in the same boat as you here. I'm tired of fighting".

[continuing page 134]

A.S. *"Do you want to keep the damage deposit and sign off and go our separate ways?"*

R.K. *"We can do that."*

A.S. *"Let's give er."*

R.K. *"Alright."*

...

A.S. *"Ok so...now that we've done this. We are severing everything and you're taking that as full payment for any damages that occurred?"*

R.K. *"Unless you want to give me a forwarding address and I can give you what's left over or we could go to arbitration as well if you want to. There are options."*

A.S. *"We just decided what we are doing."*

R.K. *"Then it's done. I closed the book: we're done and you guys can leave. I just need to collect the key and any copies."*

...

A.S. *"Hey [R.], let's write on the bottom of that page that you're accepting..."*

R.K. *"We did. That's what this is for."*

A.S. *"ok..."*

The Tenants' counsel submitted that the mutual agreement between the parties represented a binding contract as all elements of a contract were present; namely, there was an offer by the Tenants: that the Landlords retain the full deposits in exchange for all claims, which was fully accepted by the Landlords and that the consideration paid was the \$1,800.00 security deposit.

The Tenants' counsel also submitted that the Landlords should not be permitted to pursue further compensation as the Tenants, having relied on the agreement, were prevented from mitigating their losses, for instance, by tending to repairs, or further cleaning.

In response to the Landlords' \$5,000.00 claim relating to the alleged price reduction, the Tenants submitted as follows;

- these alleged losses are included in the mutual agreement between the parties;
- the realtor's evidence lacks credibility, and may not be expert/evidence;
- realtors are governed by their client's best interests and their own best interests, and therefore not unbiased;
- it is not possible to determine if the \$5,000.00 reduction was 100% related to the condition of the rental unit, or some other unknown factors; and,
- in all the circumstances, the Landlords have not proven their claim in this regard.

In response to the Landlord's claim for \$2,002.98 from the Tenants for the increased mortgage rate the Tenants submit as follows:

- the Tenants deny withholding the Landlords' mail;
- it is the Landlord's responsibility to deal with the change of address with their bank;
- there was no benefit to the Tenant's to withhold the Landlords' mail:
- if the bank sends mortgage documents to the rental address as a matter of practice, as alleged by the Landlord, this is unfortunate, and not the responsibility of the Tenants.

In response to the Landlords' claim for loss of rental income in the amount of \$7,200.00, the Tenants submit as follows:

- the Landlords have not proven this claim and in any case, any such losses are covered by the mutual agreement;
- when a house sells it typically remains vacant as it is very difficult to rent a home between the date of an accepted offer to the date of possession;

- the Landlords did not intend to rent the house at any material time and therefore this claim does not represent a real loss.
- in any case, the Tenants moved out of the property on February 4, 2015;
- the house was sold on May 9, 2015, not three days after the tenancy ended and in any case there usually is a gap in time between the date of an accepted offer, the removal of subject to's and the completion date and it is highly unlikely the property would have been rented during this time;
- as well, the Tenants paid rent for February even though they left on February 4, 2015 such that the Landlord had those funds available as well.

In summation, the Tenants' counsel submitted that the Landlords' claim should be dismissed in its entirety.

In reply the Landlords submitted that the original offer had a closing date of June 2, 2016 and was changed to July 2, 2016. The Landlords submitted in evidence a copy of the first page of the buyer's offer which was initialled by the buyers on April 30, 2016. The final Contract of Purchase and Sale was not submitted in evidence.

The Landlords submitted that the buyers had a "hard time committing to the deal" after their inspection. She confirmed that the buyers wanted the Landlords/sellers to make repairs to the rental home or a price reduction and eventually the Landlords agreed to reduce the price by \$5,000.00 to make it work.

The Landlords confirmed that the final purchase price was \$511,000.00.

Analysis

In a claim for damage or loss under section 67 of the *Residential Tenancy Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords have the burden of proof to prove their claim.

The Landlords claim the sum of \$20,981.45 in compensation from the Tenants for alleged losses relating to cleaning and repair of the rental unit, loss of rental revenue following the end of the tenancy and before completion of the sale of the rental home,

loss in revenue from the sale due to the condition the rental unit was left by the Tenants, and increased bank interest charges on their mortgage.

The Tenants submit that the parties entered into a binding agreement on February 15, 2015 (the date of the final walk through) and that pursuant to this agreement the Landlords agreed to retain the Tenants' security and pet damage deposits in the amount of \$1,800.00 as full and final satisfaction of any and all claims arising from the tenancy. In support, the Tenants submitted a recording of the conversation between the parties during the walk through. That recording was transcribed by the Landlords and both parties agree the transcription is accurate.

I find that the transcripts of the discussion between the parties confirm the parties intended the agreement to be a *final* settlement of *all* issues. I have previously reproduced the sections of that transcription which I find to be relevant to the issues before me; however, I find the following to be the most persuasive in making my decision:

A.S. "Ok so...now that we've done this. We are severing everything and you're taking that as full payment for any damages that occurred?"

R.K. "Unless you want to give me a forwarding address and I can give you what's left over or we could go to arbitration as well if you want to. There are options."

A.S. "We just decided what we are doing."

R.K. "Then it's done. I closed the book: we're done and you guys can leave. I just need to collect the key and any copies."

Based on the evidence before me, the testimony and submissions of the parties I find that the parties reached a comprehensive settlement of all issues arising from the tenancy. This agreement was also formalized on the move out Condition Inspection Report wherein the Tenants agreed the Landlords could retain their deposit. Accordingly, the Landlords' claims for further compensation must be dismissed.

I find that the fundamental elements of a binding contract exist in the agreement reached by the parties during the walk through: namely, offer, acceptance and consideration. Specifically:

1. the Tenants *offered* to relinquish any claim they had for return of their security and pet damage deposit in the amount of \$1,800.00;

2. the Landlords communicated their acceptance of the Tenants' offer during this conversation; and
3. the Landlord retained the Tenants' security and pet damage deposit in the amount of \$1,800.00 such that consideration was paid.

While the Landlords may have subsequently decided that \$1,800.00 was insufficient to cover all their loss, and photographic evidence submitted by the Landlords suggests that may have been the case, a "bad deal" is not grounds for setting aside a contract.

The Landlords failed to submit any evidence to support a finding that the contract should be set aside on the accepted grounds of misrepresentation, mistake, duress, illegality or unconscionability.

The Landlords inspected the rental unit with the Tenants on February 15, 2016. Had the Landlords wished to complete a more thorough inspection, or otherwise more accurately identify and quantify their loss, the *Residential Tenancy Act*, allows them 15 days to make an application to retain the security deposit, two years from the date of the end of the tenancy to claim for damages, as well as up to 14 days prior to the date of any hearing to submit evidence in support of their claim.

The tenancy ended in February of 2015 and the parties reached a comprehensive agreement at that time. Some eight months later, on September 23, 2015 the Landlords applied for dispute resolution seeking substantially more than they agreed to accept from the Tenants. The Tenants, relying on the agreement reached during the final inspection, would have had no reason to believe the Landlords wished to go back on the deal reached in February.

I find that it would be unfair and prejudicial to the Tenants to allow the Landlords to resile from this agreement eight months later. I agree with the Tenants counsel that the Tenants, relying on the agreement reached in February of 2015, had no opportunity to mitigate any losses, attend to any repairs of the rental unit, or fully compile evidence to defend any subsequent claims.

Further, and while I have dismissed the entirety of the Landlords' claims, I note the following.

I find that the Landlords failed to prove there was an agreement with the Tenants with respect to the payment of the mold inspection. Accordingly, I would have dismissed their claim for \$559.65 in compensation.

I also find that the Landlords failed to take into consideration *Residential Tenancy Branch Policy Guideline 40* which sets out the useful life of building elements. For instance, I find that the majority of the carpets were four years old at the start of the tenancy and six years old at the end. According to *Policy Guideline 40*, carpets have a useful building life of 10 years, such that the amounts claimed by the Landlords for carpet replacement, had they been awarded, would have been reduced based on their age. Similar reductions would have been made for the bathroom sink, counters and painting.

As noted during the hearing, the Landlords expenses relating to travel to the rental unit from their home are not recoverable under the *Residential Tenancy Act*. The Landlords' choice to live outside the community in which the rental unit is located and any associated costs with travel to and fro are not the responsibility of tenants.

I further find that the Landlords failed to prove that the \$5,000.00 loss in sale price was related to the tenancy. While the condition of the rental unit may have been a factor, it is not possible to ascertain, based on the evidence before me, what other factors contributed to this decision, and what amounts should be attributed to these unknown factors. As well, I agree with the submissions of the Tenants' counsel that the Landlords' realtor's opinion in this regard is neither unbiased or an expert opinion in the legal sense.

Additionally, I find the Landlords failed to prove that their increased bank interest charges were recoverable from the Tenants. I find the Landlords failed to prove the Tenants intercepted their mail. Further, it is the Landlords' responsibility to ensure their bank has their correct address and the Landlords' responsibility to know the terms of their mortgage renewal dates.

I find that the Landlords intended to sell the property at the end of the tenancy. I accept the able submissions of the Tenants' counsel that it is unlikely the Landlords would have rented the rental unit in the interim between the end of the tenancy and the closing of the sale. Accordingly, even in the event I found the parties had not reached a comprehensive settlement, I would have dismissed their claim of lost rental revenue in the amount of \$7,200.00.

Conclusion

The Landlords' claims are dismissed in their entirety as the parties already resolved all matters by mutual agreement during the move out condition inspection.

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: September 1, 2016

Residential Tenancy Branch