



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 was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on April 6, 2016. The Landlords filed seeking a Monetary Order for: damages to the unit, site, or property; unpaid rent or utilities; to keep the security and/or pet deposits; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by both Landlords and both Tenants. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlords affirmed they served the Tenants with copies of the same documentary and photographic evidence that they served the Residential Tenancy Branch (RTB). The Tenants acknowledged receipt of that evidence and no issues regarding service or receipt were raised. As such, I accepted the Landlords' submissions as evidence for these proceedings. I note that the Landlords' photographic evidence had not been placed on the RTB file at the time of this hearing.

The Tenants confirmed that they did not submit documentary or photographic evidence in response to the Landlords' application.

Each person was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Although all documentary and oral submissions were considered, they may not all be listed in this decision.

Issue(s) to be Decided

1. Have the Landlords proven entitlement to compensation for costs for repairs and cleaning of the rental unit?
2. Are the Landlords entitled to compensation for unpaid rent and loss of rent?

Background and Evidence

The Tenants began occupying the rental unit on October 29th or 30th, 2015. They entered into a written month to month tenancy agreement that began on November 1, 2015. The monthly rent of \$695.00 plus \$50.00 utilities was payable on or before the first of each month. On November 1, 2015 the Tenants paid \$350.00 as the security deposit.

The Landlords and Tenants were not available to complete the move in inspection report form together until December 20, 2015. The unit was inspected on that date in the presence of both parties and a representative of each party signed the condition inspection report form as submitted into evidence.

The rental unit was described as being a basement suite located in a single detached house. The Landlords purchased the house in 2012 after which they removed the entire contest of the basement, "down to the studs", and fully renovated the basement creating a basement suite that was completed sometime in 2013/2014. The window blinds were approximately six months old as they were purchased for the previous tenant.

The Landlords testified that shortly after the Tenants moved into the basement suite they began to receive complaints from the upper tenant that the Tenants were causing loud noises, noises indicating there were abusive actions or behaviours going on in the basement suite. On November 14, 2015 the upper tenant gave the Landlords notice to end their tenancy due to those noises and ended their tenancy effective December 14, 2015.

The Landlords stated they were able to secure a new tenant for the upper level in December 2015. On December 26, 2015 the Landlords began to receive complaints from their new upper tenant regarding the swearing, abusive behaviour, and loud smashing noises which were indicative of damage being caused to the rental property.

The Landlords testified they were away on a vacation when they received complaints in December 2015. They said they attempted to contact these Tenants via text messages. When the Tenants failed to respond by December 31, 2015 the Landlords had their Agent serve the Tenants with a 1 Month Notice to end tenancy. This was the same Agent who the female Tenant had picked up from the Agent's residence who showed the Tenants the rental prior to entering the tenancy agreement.

The Landlords testified the Tenants did not pay the \$695.00 rent and \$50.00 utility fee that was due January 1, 2016. As such they seek monetary compensation for the unpaid rent and utilities of \$745.00

On January 4, 2016 the Landlords received a message from their upper tenant that the Tenants had moved out during the night of January 3, 2016. The upper tenant advised that he had found the rental unit unsecured with a broken window in the door. The

Landlords submitted evidence that their Agent attended the rental unit to secure it on January 6, 2016. The Landlords asserted they attended the rental unit on January 12, 2016, when they returned from their vacation, and found the rental unit had sustained excessive damage.

The Landlords now seek \$4,439.68 to recover the costs they paid to repair and clean the unit which was comprised of: \$141.75 to clean the carpets; \$30.00 repairs to the broken window in the front door; \$510.00 for cleaning and debris removal; \$168.98 to replace the broken and missing window blinds; \$185.72 cost of paint used to paint over the drywall patches created to cover the 21 holes that had been punched in the walls; \$3,030.48 for costs incurred to hire the professional drywall repairers and renovators; and \$372.75 to replace the dented fridge door.

In support of their application the Landlords submitted evidence of the damages, the move in condition inspection report form which shows the unit to be in good condition at the start of the tenancy agreement; and receipts for the work to clean and repair the rental unit. Those receipts were dated between January 10, 2016 and March 12, 2016.

The Landlords submitted they were not able to re-rent the unit until the repairs were completed and the unit was cleaned. They testified their new tenant moved into the unit effective March 15, 2016. The Landlords now seek to recover one month's lost rent for February 2016 of \$695.00.

The Tenants testified and confirmed they agreed to complete and sign the move in condition inspection report form on December 20, 2015. They asserted there was damage and issues in the rental unit that they did not note on the condition inspection report form, such as the state of cleanliness, as they had discussed those damages with the Landlords prior to completion of the form.

The Tenants did not dispute the fact that the male Tenant had been enraged and had punched holes in the walls during the tenancy; a time when he said he was dealing with his addiction. They disputed the number of holes that were left in the wall, arguing there were only 7 to 10 holes. They disputed the amounts claimed by the Landlords for repairs and argued they knew of labourers who could have completed the work for \$1,000.00 to \$2,000.00.

In addition, the Tenants confirmed the male Tenant had slammed the front door which caused the glass to break; they did not have the carpets steam cleaned when they vacated the rental unit; and they did not pay rent or utilities that were due on January 1, 2016.

The Tenants disputed causing damage to the fridge or any other damage to the kitchen area or shelves. They denied damaging the window blinds and asserted the bedroom blind kept falling off when they simply attempted to open it. The Tenants argued the rental unit and carpets were not properly cleaned when they moved in so they should not have to pay for cleaning or debris removal.

Both Tenants acknowledged that they should pay for January 2016 rent but not the utilities or the loss of rent for February 2016. The female Tenant began to argue that they vacated the rental unit January 1, 2016; then stated they had moved out on December 31, 2015 and that she told the Landlord's Agent they had moved out when he delivered the Notice to end tenancy to her at her work on December 31, 2015. She later stated they moved out several days before December 31, 2015.

In closing the Landlords noted how the condition inspection report form indicated the rental unit was clean and in good condition as of December 20, 2015. They argued the rental unit went from the clean and good condition state to sustaining extensive damage within 11 days.

The Landlords stated their Agent secured the rental unit on January 6, 2016 and they attended the unit six days later once they returned from their vacation. They asserted there was a police file and the police were considering charging the male tenant for the damages he caused. They noted the Tenant admitted to dealing with his addiction when he was out of control and argued it was possible the Tenant was so "out of it" that he did not realize all of the damage he caused. The Landlords argued they were only seeking to recover their out of pocket expenses and the amounts claimed are simply the costs that were required to be paid to get the rental unit repaired by professionals as soon as possible so they could get it rented again.

Analysis

The *Residential Tenancy Act* (the *Act*) and the Regulations stipulate provisions relating to these matters as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 67 of the *Residential Tenancy Act* states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not

complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Under section 26 of the *Act* a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this *Act*. A tenant is not permitted to withhold rent without the legal right to do so.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

I favored the Landlords' submissions over the Tenants' submissions. I favored the Landlords' submissions as they were consistent; forthright; credible; and supported by irrefutable evidence. I find the Landlords' submissions of the amount of damage and the possibility of the Tenant not realizing the extent of the damage he caused to be reasonable given the circumstances presented to me during the hearing. The Tenants' submissions were inconsistent at times and were not supported by any documentary evidence.

Notwithstanding the Tenants' submissions that they were of the opinion the repairs could have been completed at a lesser cost, I find the Landlords did what was reasonable to enact the repairs by professionals who were able to complete the job correctly and in a timely fashion to limit their continued loss of revenue; as required by section 7 of the *Act*.

After consideration of the totality of evidence before me, I find there was sufficient evidence to prove all of the amounts claimed by the Landlords for repairs and cleaning totalling \$4,439.68; plus unpaid rent and utilities of \$745.00; and loss of rent for February 2016 of \$695.00. As such I award the Landlords monetary compensation in the amount claimed of **\$5,879.68**, pursuant to section 67 of the *Act*.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

Monetary Order – This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$350.00 security deposit since November 1, 2015.

Repairs; cleaning; unpaid rent, utilities, and loss of rent	\$5,879.68
Filing Fee	<u>100.00</u>
SUBTOTAL	\$5,979.68
LESS: Security Deposit \$350.00 + Interest 0.00	<u>- 350.00</u>
Offset amount due to the Landlord	<u>\$5,629.68</u>

The Tenants are hereby ordered to pay the Landlords the offset amount of \$5,629.68 forthwith.

In the event the Tenants do not comply with the above order, The Landlords have been issued a Monetary Order in the amount of **\$5,629.68** which may be enforced through Small Claims Court upon service to the Tenants.

Conclusion

The Landlords were successful with their application and were awarded a \$5,629.68 Monetary Order.

This decision is final, legally binding, 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: September 16, 2016

Residential Tenancy Branch