



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, OLC, FF

Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

The Landlord applied requesting a monetary order for damage to the unit; a monetary order for unpaid rent; to keep all or part of a pet damage deposit or security deposit, and to recover the cost of the application fee.

The Tenants applied for compensation for damage or loss under the Act, regulations or tenancy agreement; for the return of the security deposit and for an order that the Landlord comply with the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

Preliminary and Procedural Matters

The Landlord testified that he sent a copy of his evidence to the Tenants using Canada Post Registered Mail on May 9, 2016. The Landlord testified that the Registered Mail was unclaimed by the Tenants and it was returned to the Landlord. The Landlord provided the Registered Mail tracking number as proof of service. The Landlord testified that the mail was sent to the Tenants address as recorded within the both applications. The Tenants testified that they never received the Landlord's evidence.

Section 90 of the Act states that a document served by registered mail is deemed to be received on the fifth day after it is mailed.

The majority of the Landlord's evidence consisted of pictures taken of the rental unit showing the condition of the unit at the end of the tenancy. Pictures of the linoleum floor and receipts for the linoleum floor is the only evidence related to the Landlords monetary claim, and the Tenant accepted responsibility for damaging the linoleum floor during the hearing. Nevertheless, I accept the Landlords testimony that he sent the evidence to the Tenants, and I find that the Tenants are deemed to have received the Landlord's evidence pursuant to section 90 of the Act.

The Tenants provided three black and white photocopied photographs. These three photographs are of such poor quality that they have no probative value and will not be considered in the hearing.

Issues to be Decided

- Is the Landlord entitled to compensation due to damage to the rental unit?
- Is the Landlord entitled to compensation for unpaid rent?
- Are the Tenants entitled to double the security deposit?
- Can the Landlord retain the security deposit in partial satisfaction of his claim?
- Are the Tenants entitled to money owed or compensation in the amount of \$4,200.00 for damage or loss under the Act, regulation or tenancy agreement?
- Are the parties entitled to recover the cost of the filing fee

Background and Evidence

The parties testified that the tenancy commenced on June 24, 2015, as a month to month tenancy. Rent in the amount of \$1,500.00 was due on the first day of each month. The Tenants paid a security deposit of \$750.00 to the Landlord. The Tenants testified that they acquired a small dog in November 2015, but were not asked to pay a pet damage deposit by the Landlord.

The Parties testified that the Tenants moved out of the rental unit on February 28 or February 29, 2016. The Landlord testified that there is no written tenancy agreement.

The Parties testified that the Landlord conducted a move in inspection and conducted a move out inspection but did not provide a copy of the Condition Inspection Report to the Tenants. The Landlord did not provide a copy of the Condition Inspection Report for this hearing.

Landlord's Application

Rent

The Landlord testified that the Tenants did not provide the Landlord with the proper written Notice to end the tenancy. The Landlord testified that the Tenants moved out at the end of February 2016, and because the Tenants did not provide proper Notice, he suffered a loss of rent for the month of March 2016. The Landlord testified that he attempted to re-rent the unit but was unable to rent it out for the months of March 2016, and April 2016. The Landlord testified that he needed time to have some repairs done to the rental unit. The Landlord testified that he rented the unit out to a new tenant in May 2016. The Landlord is claiming \$1,500.00 for loss of rent for the month of March 2016.

The Tenants testified that when they rented the unit they intended to stay for a short period of time. They had bid on a townhouse and when they were offered the townhouse they gave the Landlord Notice that they were moving out. The Tenants testified they gave the Landlord one and a half weeks' notice prior to moving out. The Tenants testified that the Landlord brought people through the unit immediately after they gave Notice.

Damage

The Landlord testified that the Tenants damaged the linoleum floor in the kitchen. The Landlord is claiming the amount of \$911.00 for the purchase of new linoleum and for the installation of the new linoleum floor. The Landlord testified that the linoleum floor was brand new when the Tenants moved into the rental unit. The Landlord has provided invoices to show the replacement cost and installation cost for having the linoleum replaced. The receipts indicate the Landlord paid \$561.65 for the new linoleum and also paid \$300.00 for the removal of the old linoleum and installation of the new linoleum. The Landlord has provided color photographs showing the damage to the linoleum floor.

In response, the Tenants acknowledge that they caused damage to the linoleum floor. They submit that they have a friend who works with flooring who quoted replacement of the linoleum floor at a cheaper price than the Landlord paid. The Tenant J.B. stated that the quote for ne linoleum was between \$400.00 to \$500.00.

Cleaning

The Landlord testified that he had to have the carpet treated for the smell of pet urine. The Landlord did not provide any photographs of staining on the carpet and did not provide a receipt for having the carpet treated. The Landlord is claiming the amount of \$85.00 to have the carpet treated.

The Tenants replied that they do not believe that the Landlord had to treat the carpet for urine. They submit that there was no mention of any urine or any staining during the move out inspection.

Security Deposit

The Landlord is requesting to keep all or part of the \$750.00 security deposit in satisfaction of his claim for unpaid rent and damage.

The Tenants submit that they participated in a move in and move out inspection but the Landlord failed to provide the Tenants with a copy of it. The Tenants submit that during the move out inspection, other than the linoleum, the Landlord was silent about any damage or uncleanliness. The Tenants submit that they provided their forwarding address to the Landlord in writing at the move out on February 28, or 29, 2016.

Section 12 of the Act states that the standard terms are terms of every tenancy agreement whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and whether or not the tenancy agreement is in writing.

Section 45 of the Act states that a Tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the Landlord receives the notice, and is the day before the day in the month, that rent is payable under the tenancy agreement.

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

The Guideline also states that the right of a Landlord to obtain the Tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required; and/or*
- *having made an inspection does not complete the condition inspection report, in the form required by the Regulation, **or provide the tenant with a copy of it.***
[my emphasis]

The policy guideline also provides that a Landlord, who has lost the right to claim against the security deposit for damage to the rental unit, retains the following rights:

- *to file a claim against the deposit for any monies owing for other than damage to the rental unit;*
- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.*

Tenant's Application

The Tenants submit that the rental property contains an upper and a lower rental suite. The Tenants rented the upper suite. The Tenants testified that the Landlord did not adhere to the Act. The Tenants submit that the Landlord was on the property every day. The Tenants submit that there was no agreement that the Landlord would hang out in the garage on the property every day.

Loss of Use

The Tenants submit that at the start of the tenancy the Landlord told them he would build a garage and that the Tenants would have partial use of the garage on a 50/50 basis. Once the garage was built the Tenants submit that the Landlord used the majority of the garage and would do hobbies within the garage. The Tenants submit that they stored a small car in the garage and only had use of one small shelf.

Loss of Quiet Enjoyment

The Tenants submit that their tenancy was disturbed on one occasion where the Landlord was building the garage and jack hammering on the property. The Tenants state the Landlord gave no Notice that he would be there, let alone be jackhammering. The Tenants also submit that the Landlord would park his vehicle in the driveway which was impeding the Tenants use of the driveway.

In response, the Landlord testified that the rental property contains two suites and that he was on the property to finish building the basement suite in order to rent it out. The Landlord submits that he was also on the property to build the garage. The Landlord also submits that the agreement with the Tenants was that the Landlord and Tenant would both share the use of the garage. The Landlord submits that he had a right to be on the property and he had a right to be in the garage and use the garage.

The Tenants submit that they became aware that there was an occasion where the Landlord and a city worker entered their rental unit illegally. The Tenants submit that the Landlord did not provide written Notice prior to entering the unit and that the Tenants did not give prior permission for the Landlord to enter. The Tenants also state that the Landlord would show up at the door with people who wanted to view the rental

unit. They submit that the Landlord did not provide them with prior Notice of these showings.

The Landlord testified that he needed to get an electrical inspection completed and that he told the Tenants that he would need to enter their rental unit. He submits that the Tenants had previously told him that he could enter, so he did enter with an electrician for the purpose of the inspection.

The Tenants testified that they did not address any of the concerns they had with the Landlord in writing during the tenancy.

The Tenants are asking to be compensated in the amount of \$4,200.00 as a rental reimbursement. The Tenants monetary worksheet indicates that their personal space was invaded and they were forced out. The Tenant's indicate their claim amount is for 50% of the monthly rent that they paid for a 6 month period.

Security Deposit

The Tenants are also asking for the return of their security deposit. The Tenants submit that during the move out inspection, other than the linoleum, the Landlord was silent about any damage or uncleanliness.

Section 7 of the Act states that 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. 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.

Residential Tenancy Policy Guideline # 5 states that the duty to mitigate means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. The policy guideline also states that where the Tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the Landlord is not required to rent the rental unit or site for the earlier date.

Residential Tenancy Policy Guideline #6 Entitlement to Quiet Enjoyment states that a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- *reasonable privacy;*

- *freedom from unreasonable disturbance;*
- *exclusive possession, subject to the landlord's right of entry under the Legislation; and*
- *use of common areas for reasonable and lawful purposes, free from significant interference.*

A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these. Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment. In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

Residential Tenancy Policy Guideline #7 Locks and Access states:

*The Residential Tenancy Act does not require that notice be given for entry onto **residential property**, however, the Act recognizes that the common law respecting landlord and tenant applies. Therefore, unless there is an agreement to the contrary, entry on the property by the landlord should be limited to such reasonable activities as collecting rent, serving documents and delivering Notices of entry to the premises.*

Analysis

Landlord's Claims

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Pursuant to section 2 and 12 of the Act, the Act applies to the oral tenancy agreement between the parties. The Tenants failed to give the Landlord proper Notice to end the tenancy pursuant to section 45 of the Act, and consequently the Tenants are responsible to pay the Landlord rent for the month of March 2016. The Landlord was not required to attempt to re-rent the unit for the month of March 2016. I award the Landlord \$1,500.00 for March 2016 rent.

The tenancy ended on February 29, 2016. The Landlord applied for dispute resolution on May 5, 2016. The Landlord failed to repay the security deposit to the Tenants or

make an application for dispute resolution against the security deposit within 15 days of the date the tenancy ended which is also the date the Tenants provided their forwarding address. The Landlord also failed to provide the Tenants with a copy of the Condition Inspection report as required under section 24(1) of the Act. Neither party testified that there was an agreement that the Landlord could retain all or part of the security deposit. Consequently, the Landlord's right to claim against the security deposit is extinguished. Pursuant to section 38 (6) of the Act, the Landlord must pay the Tenants double the amount of the security deposit. I award the Tenants \$1,500.00 which is double the amount of the security deposit.

While the Landlord lost the right to claim against the security deposit for damage, the Landlord retains the right to claim against the deposit for any monies owing other than damage to the rental unit. The Landlord also retains the right to claim for damages arising out of the tenancy, including damage to the rental unit.

The Tenants damaged the linoleum floor in the rental unit. The linoleum floor was new when the Tenants moved into the rental unit. I find that the Tenants are responsible to pay the full cost for the replacement of the linoleum floor. I award the Landlord \$861.65 for the cost of replacing the linoleum floor.

The Landlord did not provide sufficient evidence to support his claim for \$85.00 for treating a carpet for pet urine. The Landlord did not provide a photograph or receipt for the cost of the treatment, and did not provide a copy of the Condition Inspection Report for the move out inspection. The Tenants oppose the claim and testified there was no stain and there was nothing mentioned at the move out inspection. The Landlord's claim for \$85.00 is dismissed.

Tenant's Claims

I dismiss the Tenants claim for loss of use of the garage. The parties agreed to share the use of the garage and the Tenants were storing a vehicle in the garage. The Tenants did not establish that they suffered a loss of use. In addition the Tenants did not provide any testimony or evidence to establish the value of any loss. Lastly I find that the Tenants did not attempt to mitigate any loss of use of the garage as they testified that they did not notify the Landlord of their concerns in writing. The Tenants did not properly address the issue to the Landlord during the tenancy.

I also dismiss the Tenants claim for loss of quiet enjoyment. The parties agreed that the Landlord would build a garage. The parties agreed to share the use of the garage once it was built. The rental property contains another rental unit in the lower part of the house. I find that the Landlord was not required to give the Tenants Notice that he would be on the property. I find that the Tenants submission about being disturbed by

the Landlord jackhammering was a temporary inconvenience and the Tenants should have expected some noise due to the agreement between the parties that the Landlord was building a garage on the property. There is insufficient evidence from the Tenants that there was frequent and ongoing interference or unreasonable disturbances.

I am also mindful that within the Tenants Application they indicate that their personal space was invaded and they were forced out. I find that this submission is inconsistent with their testimony that they only intended to stay for a short period of time because they were looking for a house and gave one and a half weeks' Notice to the Landlord when they were offered a townhouse.

I find that the Landlord entered the Tenants rental unit on one occasion for a legitimate purpose to conduct an electrical inspection, but the Landlord failed provide the Tenants with proper written notice of entry. The Tenants submit that this is a loss of privacy issue, but they also testified that they were not at home when this occurred. There is no evidence that this behaviour of the Landlord was an ongoing issue. The Tenants did not assign a specific value on this loss of privacy. I find that the Tenants had the right to say no to the Landlord when he knocked on the door requesting to show the unit to potential Tenants. The Tenants allowed the Landlord to come into the unit but were under no obligation to do so. The Tenants could have demanded 24 hours written Notice. I decline to award the Tenants compensation due to the Landlord entering the suite with the electrician.

With respect to the Tenants claim for the return of double the security deposit, as explained earlier in this decision the Tenants are awarded \$1,500.00.

Set Off of Claims

The Landlord is awarded a monetary claim in the amount of \$2,361.50. This amount is comprised of \$1500.00 for March 2016, rent and \$861.65 for the replacement of the linoleum floor.

The Tenants are awarded a monetary claim in the amount of \$1500.00 for the return of double the security deposit.

After setting off the amounts of the awards, I grant the Landlord a monetary order in the amount of \$861.65. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord and Tenants were equally successful in their applications, I decline to order either party to pay the other for the cost of the filing fee for this hearing.

Conclusion

The Tenants did not end the tenancy in compliance with the provisions of the Act, and I find that the Tenants owe the Landlord \$1,500 for unpaid rent for the month of March 2016. The Tenants also owe the Landlord \$861.65 for damage.

I award the Tenants \$1,500.00 on their claim for the return of double the security deposit.

After offsetting the amounts owed by each party, I grant the Landlord a monetary order in the amount of \$861.65. This order must be served on the Tenants and may be enforced in Provincial 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: September 23, 2016

Residential Tenancy Branch

