



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for return of all or part of the pet damage deposit or security deposit; for double the amount of the security deposit; for other relief; and to recover the filing fee from the landlord.

The landlord and both tenants attended the hearing, and all parties gave affirmed testimony.

The tenants advised that none of the landlord's evidentiary material, or the landlord's application, or the Notice of a Dispute Resolution Hearing were received by the tenants. The landlord advised that the application and Notice of a Dispute Resolution Hearing were served to each of the tenants individually by registered mail on April 14, 2016 at the address provided by the tenants at the end of the tenancy and has provided 2 Registered Domestic Customer Receipts, and a Canada Post cash register receipt bearing that date. The landlord then received the Tenant's Application for Dispute Resolution and upon checking with the Residential Tenancy Branch, the landlord served the tenants with the balance of the landlord's evidentiary material and Amendment to the application to the address of the tenants contained in the tenants' application on August 19, 2016. The tenants agreed to proceed with the hearing without the benefit of any of the documents referred to by the landlord, and did not seek or consent to an adjournment. Therefore, all evidence, as well as the testimony of the parties is considered in this Decision.

At the commencement of the hearing the landlord advised that the landlord's surname has changed, and the parties agreed to amend the Style of Cause, which is the Style of Cause contained in the frontal page of this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid utilities?
- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be permitted to keep any of the security deposit in full or partial satisfaction of the claim?
- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?
- Have the tenants established a monetary claim as against the landlord for recovery of expenses incurred, and more particularly for a new carpet?

Background and Evidence

The landlord testified that this fixed term tenancy started on February 1, 2015 and was to expire on January 31, 2017, however the parties agreed to an early end date and the tenancy ended on March 31, 2016. Rent in the amount of \$3,150.00 per month was payable on the 1st day of each month and there are no rental arrears. On December 22, 2014 the landlord collected a security deposit from the tenants in the amount of \$1,575.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a duplex, and the other suite was also tenanted. A copy of the tenancy agreement has been provided.

No move-in or move-out condition inspection reports were completed, however at the beginning of the tenancy the rental unit needed some work and the landlord had done some repairs. The landlord gave the tenants keys early, and the landlord was working at that time to make sure the rental unit was clean, including shampooing the carpet. At the end of the tenancy, the parties walked through the rental unit and some items that the landlord felt needed correcting were pointed out, such as a broken door, marks in the basement walls where the tenant had puttied but didn't sand or paint, and the hardwood floor. The tenants told the landlord the door would be finished in an hour, so the landlord left, and upon returning the tenants were gone and they had the keys.

The landlord further testified that the tenants left without paying the water bills, and has provided 2 bills, in the amounts of \$262.43 for October, November and December, 2015 and \$190.60 for the next 3 months. The landlord claims \$453.11 as against the tenants.

The landlord also testified that the tenants didn't clean the balconies upon move-out, and the landlord claims \$160.00 for pressure washing 4 balconies, and an Invoice in that amount dated April 4, 2016 has been provided.

The landlord also claims \$140.00 for a broken door. The landlord testified that she noticed the damaged door when the house was shown in January, and the tenants advised that their son had broken it, but they would have it repaired before moving out. The tenants didn't come back until April 26, 2016 to fix it. It wouldn't close, squeaked and was a nuisance. The landlord had to have it readjusted and has provided a receipt dated July 14, 2016. During cross examination the landlord testified that the tenant purchased and brought a new door but it didn't fit, and explained that the door required was a custom door. The tenant took the existing door to have another cut to fit, and when it was returned it was the exact size as the original door. It closed, but it squeaked. The tenant explained that the hinges were tight because it was new and told the landlord to get oil from the tenants and left.

The landlord also claims \$110.00 for repairing, sanding and painting the walls in the hallways, and testified that they were all newly repaired and painted before the tenants moved in. The landlord has provided proof of that in an invoice dated January 4, 2015. At the end of the tenancy the landlord had to have them repaired again, and an Invoice dated July 16, 2016 has been provided.

The landlord also claims \$1,552.50 for repairs to the hardwood floors. A copy of an estimate has been provided dated July 28, 2016. The landlord testified that she has not had the means to pay for it yet, but they are maple floors. The tenants' treadmill and dragging furniture ruined the floor, and the tenants said it was just wear and tear. The landlord disagrees, and testified that the floors were not looked after during the tenancy. The floors are about 10 years old, but the damage was not done before.

Photographs have also been provided by the landlord, which the landlord testified were taken on the 2nd or 3rd of April, 2016.

The landlord was very evasive during some questioning by the tenants, but testified that the previous tenants had left the rental unit in a state that made the landlord upset to the point of tears. They left toys and other things behind. It also needed cleaning and paint, and the landlord told the tenant at the beginning of the tenancy that even though the keys were given to the tenants early, the landlord would be working in the house. The landlord does not know how much time the tenants spent cleaning, or how much garbage they took to the local landfill, but they volunteered to do so. The tenants painted and sanded holes left from the previous tenants, but then made the same holes again.

On January 28, 2015 the parties met and discussed that the previous tenant's cats had seriously soiled the carpet in the lower bedroom, and that the smell was overbearing even after shampooing. The tenants told the landlord that the tenants could get it replaced for the landlord at a reduced cost, and asked if the landlord had another person to get a quote from. The tenants wanted it done right away and there wasn't any time; the landlord got 2 days notice. The carpet was replaced but the landlord testified that she doesn't know what was put there. The tenants paid for it and the parties signed a 2-page agreement, a copy of which has been provided. The landlord's evidentiary material also contains a type-written version of events in

which the document is referred to as an Addendum. The landlord testified that the parties agreed that the landlord would pay \$200.00 toward the carpet, which was paid.

The landlord denies the tenants' claim and claims \$2,485.61 as against the tenants including recovery of the \$100.00 filing fee.

The first tenant testified that prior to the commencement of the tenancy the landlord had told the tenants that no rent had been collected for 3 months due to previous tenant issues. The landlord wanted \$3,600.00 per month for rent, and the tenant disagreed to that due to the state the rental unit was in when the parties walked through. The parties eventually agreed to \$3,150.00 per month and that the rental unit would be in good condition before the tenants moved in. On January 10, 2015 the landlord agreed that if the tenants helped clean it would speed up the move-in date. The landlord had to get the previous tenants out, who left bags of garbage in the rental unit. Floors were marked up, there was damage to the walls, and the plumbing was plugged in the master bathroom and shower. The tenant fixed the shower and the tenants cleaned for 5 or 6 days. The tenants agreed to clean in exchange for not paying rent until January 15, 2015. The landlord never helped at all. That's why no move-in report was done – it would have taken 100 pages to list the things that needed to be done.

The tenants agreed to deal with small repairs, including replacing bulbs, and also had to move a dryer, but at no time during the tenancy, having full access, did the landlord ever mention anything about the condition of the rental unit. The tenants allowed the landlord to inspect whenever she wanted.

On the move-out date the landlord went through the rental unit with a fine-tooth comb and mentioned 4 things that the landlord wanted the tenants to do: sand and paint the recreation room pin holes, clean the freezer, wipe out the upstairs freezer. The fridge had some padding coming off so the tenant repaired it with double sided tape. After completing the 4 things, the tenant sent a message to the landlord asking her to attend, and continued to send text messages. The landlord replied that she would be there at 3:30. The tenants' movers were there, but the tenant didn't hear from the landlord again till a text at 5:12 p.m., and the tenant couldn't wait any longer, replying to the landlord about where to pick up the keys.

The tenant further testified that the tenants took responsibility for the broken door, but didn't know that it had to be a custom fit door. The tenant tried on numerous occasions to install it, repeatedly asking the landlord for a date.

The tenant further testified that the tenants hired professional movers who would not even walk into the house without putting slippers on and also put moving carpet on all floors. If there had been any damage, the tenants would have charged the moving company. There was no damage, and when the parties walked through, the landlord accompanied by her husband, mentioned nothing except the 4 things. The tenant's father-in-law pressure washed the deck, and all claims of the landlord are new to the tenants. Nothing was mentioned at the end of the tenancy.

The second tenant testified that if the tenants had known that the door had to be custom made they would have ordered it sooner. The tenants made ample efforts to have it installed but the landlord and the tenant's spouse were out of town a lot.

The tenant further testified that damage to the floor in the office was not caused by the tenants. The previous tenants had animals, and the tenant believes the landlord attempted to claim the same repairs from those previous tenants. To say that the tenants caused damage to the rental unit is a blatant lie.

The landlord wanted to keep the security deposit until the final water bill was received. The Residential Tenancy Branch told the tenants that the landlord could not keep the deposit. The landlord advised that she sent the security deposit to the tenants, but they didn't receive it. Then the landlord told the tenants that the landlord had put a stop payment on the cheque because the landlord had just found out about a water bill and had to protect herself, wanting to hold the security deposit until April 30, 2016.

The tenant agrees to the water bills as claimed by the landlord.

The tenants claim \$3,784.00, being double the security deposit and \$534.00 for replacing the bedroom carpet and recovery of the \$100.00 filing fee.

Analysis

The *Residential Tenancy Act* and the regulations go into great detail with respect to a landlord's responsibility to ensure that move-in and move-out condition inspection reports are completed at the beginning and end of a tenancy, and that the reports are evidence of the condition of the rental unit. If the landlord fails to ensure the reports are completed in accordance with the regulations, the landlord's right to make a claim against the security deposit for damages is extinguished, and I so find.

However, the landlord's right to make a claim against the security deposit for unpaid rent or utilities is not extinguished. The tenants do not dispute the outstanding water bills, and therefore, I find that the landlord has satisfied a claim in the amount of \$453.11.

Where a party makes a claim for damages against another party, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

In this case, the tenants testified that they cleaned for days at the commencement of the tenancy because the rental unit was not ready for move-in. The landlord doesn't really dispute

that testifying that the tenants were given the keys early but told that the landlord was still working in the rental unit, and the landlord has no idea how much time the tenants put into that. However, the tenants dispute the landlord's testimony that pressure washing the balconies was left for the landlord to do, and one of the tenants testified that his father pressure washed them. Where there is no evidence to support the claim and it boils down to one person's word over another, the claim has not been proven, and the landlord's claim for \$160.00 is dismissed.

With respect to the landlord's claim of \$140.00 for having a bedroom door adjusted, the landlord testified that the tenant explained that the hinges were tight and to use oil, but instead, the landlord had a service call. I have reviewed the invoice provided by the landlord which includes the casing, which is not disputed by the tenants. The invoice also mentions that the door was incorrectly installed and hinges did not fit. The tenants do not deny responsibility for the broken door, and took measures to have it replaced, however I find that the landlord incurred a cost of \$140.00 for the tenants' failure to have it repaired completely.

With respect to the landlord's claim of \$110.00 for paint and repair and sanding walls, the landlord testified that they all needed painting and repairing at the beginning of the tenancy, which was done, and the landlord has provided proof of that. However, the landlord also testified that new holes existed at the end of this tenancy exactly where the old ones were. I find that odd and either unbelievable or that they weren't repaired properly the first time. I am not satisfied that the landlord has established that the tenants failed to comply with the *Act* or the tenancy agreement, I dismiss the \$110.00 claim.

The tenants also dispute any damage to the hardwood floors, and testified that professional movers put on slippers and laid moving carpet on all floors, and that nothing to do with the floors was mentioned when the parties inspected the rental unit at move-out. He also testified there was no damage, and the other tenant testified that the previous tenants had animals, and believes the landlord has also claimed the same repairs from the previous tenant. In the absence of any reports or other evidence to satisfy me that the floors were in worse condition at the end of the tenancy than at the beginning of the tenancy, the landlord's claim cannot succeed.

With respect to the tenants' claim for double the security deposit, the *Residential Tenancy Act* requires a landlord to apply for dispute resolution claiming against the deposit or to return it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. In this case, the tenancy ended on March 31, 2016 and the landlord received the tenants' forwarding address that day. The landlord's application for dispute resolution was filed on April 13, 2016, clearly within 15 days. Having found that the landlord's right to claim against the security deposit for damages is extinguished, but not the landlord's claim for unpaid utilities, I find that the tenants are not entitled to double, but are entitled to return of the balance of the security deposit.

With respect to the tenants' claim of \$734.00 for carpeting, I have reviewed the evidentiary material provided by the parties, particularly the emails and text messages. The landlord

testified that the purchase happened all too fast, but agreed that the carpet was in need of replacing. The landlord has also provided a copy of a document purporting to be an Addendum to the tenancy agreement, but there are several terms contained in that document that are contrary to the *Act* and are either not enforceable or are not terms of a tenancy agreement at all. The document is signed by the landlord and both tenants, and with respect to the carpet states: “(The parties) have also come to an agreement regarding a replacement of one bedroom carpet due to cat odours from previous renter. Tenants have agreed to replace carpet and landlord to assist only with the installation of the carpet from their family friends known as their maintenance man.” No amount is mentioned, but the document goes on to say that the tenants will look after all minor repairs, small plumbing, appliance repair and pressure washing the balconies, and that the landlord does not want to be bothered with any of those things. A landlord is required to provide and maintain rental premises in a state of repair and decoration that makes it suitable for occupation by a tenant. The landlord agreed that the carpet required replacing, and rather than replacing it, left it to the tenants to do, along with other things, all of which is contrary to the *Act*. The tenants have provided a copy of an invoice in the amount of \$734.00 and the landlord has reimbursed \$200.00, and I find that the tenants have established the difference in the amount of \$534.00.

Since both parties have been partially successful with the application, I decline to order that either party recover the filing fees. Having found that the landlord has established a claim in the amount of \$453.11 for the water bills and \$140.00 for the bedroom door repair, and the tenants have established a claim for the \$1,575.00 security deposit and \$534.00 for carpeting, I set off the amounts and I grant a monetary order in favour of the tenants for the difference in the amount of \$1,515.89.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,515.89. This order is final and binding and may be enforced.

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: October 27, 2016

Residential Tenancy Branch