



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

The landlord applies for a monetary award for unpaid rent, for a bank charge, for damages for cleaning and repair of the premises after the tenants left and for an elevator repair bill sent by the building's strata council?

This matter was adjourned from September 27, 2016 for the landlord to re-file documents that had gone astray in the government offices, to provide the tenants with a copy and to give the tenants an opportunity to respond.

Though the exact time lines set out in the Interim Decision had not been followed, the parties agreed they were prepared to proceed without further delay.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Did the tenants damage the premises beyond reasonable wear and tear or fail to leave the premises reasonably clean? If so, what is appropriate compensation? Do the tenants owe the landlord any rent? Is the landlord entitled to recover bank charges for a returned cheque? Is the landlord entitled to recover an elevator repair bill?

Background and Evidence

The rental unit is a two bedroom condominium apartment. The tenancy started August 1, 2015 for a one year fixed term. The monthly rent was \$1200.00, due on the first of each month, in advance.

The tenants vacated the premises on March 16, 2016. They did not give the landlord notice. They say the landlord's son Mr. D.S., also their landlord, told them to leave and that he would "put a hit out" on them.

The tenants had paid \$1000.00 of the March rent by cheque. The landlord says that on March 10 he was informed by the bank there were insufficient funds to cover the cheque. The tenant Mr. W. says there were. The landlord presented the cheque for payment again in April and it was dishonoured by the tenants' bank. The landlord was charged \$45.00.

The landlord presents a number of photographs taken March 12 during his emergency entry to the rental unit because of a reported flooding while the tenants were away. The flood was caused by a failed rubber hose running from the laundry room water supply to the washing machine. The landlord thinks the tenants cut the hose and then left. The tenants deny it, saying they were both at the hospital at the time.

Both tenants are disabled and use wheelchairs. The wheelchairs have caused damage to various corners and doorways in the rental unit.

The landlord hired a worker to repair and repaint the damaged areas after the tenants left. He produces a receipt from another of his tenants in the amount of \$1155.00 for the work.

The tenants got their own estimate for the repairs, dated March 14, showing a cost of \$588.00 for the same work.

The landlord says he paid a cleaner \$320.00 to clean the rental unit. The tenants say they left the rental unit reasonably clean.

The landlord says that a cabinet in front of the kitchen sink was damaged and it cost \$425.00 to repair. He produces an undated estimate for the work and says he had the work done and paid that amount.

The landlord says the tenants damaged the fridge by breaking racks and breaking off the handle. The tenants deny it saying the handle was fine and that the racks were left they way they were found at the start of the tenancy.

The landlord says the tenants damaged the front door and the hallway in the common area. He produces a quote for \$375.00 for the repair. It has not yet been repaired.

The landlord claims \$336.00 charged to him by the strata corporation for the services of an elevator repairman to turn the elevator off and on during a repair to some glass on the wall outside the elevator. The glass had been broken by one of the tenants hitting it with a

wheelchair. The tenants acknowledged and paid for the glass repair. They don't consider themselves responsible for the elevator repairman's bill however.

Analysis

It is clear that whether or not the March rent funds were in the tenants' bank account on March 10, the \$1000.00 rent remaining for March has not been paid. That amount became due March 1 and the landlord is entitled to it.

I give no credence to the tenants' claim that they were forced out by Mr. D.J.. There were certainly not obliged to leave without proper notice or an arbitrator's order under the *Residential Tenancy Act* (the "Act") and there is no evidence they reported the threat to the police; a step any reasonable person would have taken.

The landlord is entitled to the cost of repair for the corners and doorways damaged by the tenants' wheelchairs. I assess the cost for that repair at \$871.50; halfway between the landlord's figure and the tenants' figure.

I deny the landlord's claim for cleaning. The tenants' photos taken on leaving show the premises to be reasonably clean. The landlord's photos of the interior of the rental unit were taken days before the tenants left and are not evidence of the state of the premises after they did leave.

The landlord's claim to damage to the bottom of the kitchen drawers has not been proven. The only photo of that area presented does not show any damage. I dismiss this item of the claim.

I dismiss the landlord's claim for the cost to repair the hallway area that suffered water damage. The landlord's photos of the break in the washing machine hose raise a suspicion of mischief, but without evidence from a qualified person or expert I am not able to conclude that the line was intentionally or accidentally broken by the tenants or an invitee of the tenants. I find that it failed on its own and the tenants are not responsible for any damage caused by its failure.

I dismiss the landlord's claim for fridge repairs and for entry door and hallway repairs. He failed to conduct a move-in inspection and prepare a report (as he is responsible for doing under the *Act*) that might indicate the condition of the fridge and racks, the door and the hallway at move in. He has failed to provide any convincing objective evidence of the state of those items at the time the tenants moved out.

I allow the landlord's claim for \$45.00 for NSF fees. He was entitled to negotiate the tenants' cheque in April. That was not an unreasonable time to present it for payment. The tenants were obliged to ensure the cheque would be honoured by their bank at that time.

I allow the landlord's claim for the elevator workman. He has shown that the elevator workman was required in order for the strata corporation to repair the damage the tenants caused. It follows that they are responsible for the bill of \$336.00.

In result the landlord is entitled to a monetary award totalling \$2252.50 plus recovery of the \$100.00 filing fee.

I authorize the landlord to retain the \$600.00 security deposit in reduction of the amount awarded leaving a balance of \$1652.50.

I decline to grant any monetary order to the landlord as the tenants have an outstanding monetary award against him in the approximate amount of \$1800.00 from an early dispute resolution hearing (file number shown on cover page of this decision). The landlord is entitled to set off \$1652.50 against the amount remaining due under that award.

If either party requires further direction in regard to set off, they may re-apply.

Conclusion

The landlord's application is allowed in part.

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 26, 2016

Residential Tenancy Branch