



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 dealt with a landlord's application for a Monetary Order for compensation for damage to the rental unit; unpaid utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenants did not appear at the hearing. The landlords provided registered mail receipts to show that a hearing package was sent to each tenant on May 15, 2016. The address used for service was a forwarding address provided by the tenant via text message on May 7, 2016. The registered mail packages were successfully delivered. I was satisfied the tenants were notified of this proceeding in a manner that complies with the Act and I continued to hear from the landlord without the tenants present.

On a procedural note, I noted that the amount appearing in the box applicable for seeking a Monetary Order is not the sum of the amounts appearing the details of dispute. The landlord explained that the amount is the net amount after deducting the security deposit. Although there is a slight discrepancy in the mathematical calculation, I have amended the application to correspond to the individual amounts appear in the details of dispute.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants in the amounts claimed?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy was set to commence June 1, 2015; however, the tenants were provided early possession on May 19, 2015. The tenants paid a security deposit of \$975.00 and were required to pay rent of \$1,950.00 on the first day of every month. Utilities were not included in the monthly rent. The tenancy ended on April 30, 2016.

The landlord seeks to recover the following amounts from the tenants:

Unpaid hydro bills -- \$1,502.82

The landlord explained that she discovered the tenants had failed to pay for hydro when the City sent a collection letter to the landlord after their tenancy ended, in June 2016. The landlord provided a copy of the collection letter in support of her claim. The letter indicates the unpaid amount will be transferred to the landlord's property tax account if it remains unpaid.

Unpaid water bills -- \$545.94

The landlord stated that the water bills were sent to the landlord by the City and then the landlord would email them to the tenants but the tenants did not pay her. The landlord provided copies of several water bills in support of her claim.

Cleaning and garbage removal -- \$350.00

The landlord submitted that the rental unit was not left clean and the tenants left behind abandoned property and garbage. The landlord's husband cleaned and removed the junk over two days. The landlord provided a photograph of a dirty sundeck, crayon on a wall, a dirty bathroom floor, and a dirty stove and oven. The landlord's photographs also show some garbage left on the sundeck. In addition, the landlord submitted that the tenants left behind heavy appliances and six large tires that had to be disposed of. The landlord stated there was also oil stains on the carport floor that had to be cleaned although a photograph was not taken.

Damage to wall and countertop -- \$650.00

The landlord submitted the tenants left a large hole in a wall and damaged the bathroom countertop. The landlord provided photographs of the damage and a copy of the move-in inspection report to show these areas were not damaged at the start of the tenancy.

I noted that the amounts claimed for damage were not accompanied by corroborating evidence. I also noted that the amount claimed for cleaning and damage, when added together, was nearly the same as the security deposit. The landlord testified that the repair of damage was done by the in-coming tenants. The landlord testified that the in-coming tenants were paid by cheque but when I asked if the cancelled cheque would be available for my review this was not forthcoming and landlord's husband offered to provide a receipt signed by the incoming tenants instead. I did not authorize the landlord to provide a receipt after the teleconference call ended. I heard that the countertop was new in 2005.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon review of the tenancy agreement, I accept that the tenants were required to pay for their own utilities during the tenancy, including hydro and water. Upon review of the collection letter addressed to the landlord by the City on June 20, 2016 I accept that the tenants incurred hydro charges totalling \$1,502.82 while at the rental property and that landlord was required to satisfy the arrears in order to avoid the arrears being transferred to the landlord's property tax account. The landlord also provided several water bills during the period of the tenancy and I find the landlord incurred costs of \$545.94 during the tenancy and the tenants were responsible for paying for water. Therefore, I award the landlord \$1,502.82 for hydro and \$545.94 for water, as requested.

Under section 37 of the Act, a tenant is required to leave a rental unit vacant, including removal of all of their possession, and reasonably clean at the end of the tenancy. Based upon the landlord's photographs and the unopposed submissions of the landlord, I accept that the tenants failed to remove all of their abandoned possessions and garbage from the property and they did not sufficiently clean the property. I find the landlord's submissions that the landlord's spent two days cleaning and removing abandoned possessions and garbage from the property. I accept that landlord's claim for \$350.00 for two days' worth of labour to be within reason. Therefore, I grant the landlord's request to recover \$350.00 from the tenants for cleaning and junk removal.

Under section 32 and 37 of the Act a tenant is required to repair damage they cause by way of their actions or neglect. These sections of the Act also provide that reasonable wear and tear is not damage. Accordingly, where an item is so damaged it requires replacement, it is often appropriate to reduce the replacement cost by depreciation of the original item. Based upon the landlord's photographs and the move-in inspection report, I accept that the tenants caused a hole in the drywall and the countertop was damaged during the tenancy. However, I find the landlord's request for \$650.00 for these damages to be unsupported. Also of consideration is that the countertop was 11 years old at the end of the tenancy and, according to Residential Tenancy Policy Guideline 40, countertops have an average useful life of 25 years. Nevertheless, in recognition that the tenants damaged the property, but the landlord's lack of evidence to verify the value of the loss, I find it reasonable to provide the landlord with an award based upon estimates I consider reasonable in the circumstances: \$150.00 to repair the hole in the wall and \$150.00 for the countertop damage. Therefore, I award the landlord \$300.00 for damage to the property.

Since the landlord's claims had merit, I further award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord.

In light of all of the above, I provide the landlord with a Monetary Order to serve and enforce the tenants, as calculated below:

Unpaid hydro bills	\$1,502.82
Unpaid water bills	545.94
Cleaning and garbage removal	350.00
Damage to wall and countertop	300.00
Filing fee	100.00
Less: security deposit	<u>(975.00)</u>
Monetary Order	\$1,823.76

Conclusion

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$1,823.76 to serve and enforce upon the tenants.

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: November 25, 2016

Residential Tenancy Branch