



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	MND MNDC
	Tenant:	MNDC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord's Application is dated July 19, 2016 (the “Landlord's Application”). The Landlord applied for the following relief pursuant to the *Act*:

- a monetary order for damage to the unit, site or property; and
- a monetary order for money owed or compensation for damage or loss.

The Tenant's Application was received at the Residential Tenancy Branch on July 26, 2016 (the “Tenant's Application”). The Tenant applied for a monetary order for money owed or compensation for damage or loss, pursuant to the *Act*.

The Landlord attended the hearing on his own behalf. Both Tenants attended the hearing on their own behalves. All parties giving evidence provided a solemn affirmation.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

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 – Evidence

This hearing was first convened on September 2, 2016. With the agreement of the parties, the hearing was adjourned to provide both parties with sufficient opportunity to prepare their evidence in accordance with the Rules of Procedure. They were specifically ordered to submit all evidence upon which they intended to rely in one package with pages numbered sequentially, and to make no further amendments.

Compliance with the order dated September 2, 2016 was divided. The Tenants provided their documentary evidence in two binders, organized under tabs. The Landlord did not comply with the order, submitting his documentary evidence in seven smaller packages. In one such package, the Landlord submitted a letter purporting to increase his monetary claim to include various repairs and lost rent.

In light of the Landlord's failure to comply with my order of September 2, 2016, I decline to consider the documentary evidence he submitted. I have, however, considered the Landlord's oral testimony.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the unit, site or property?
2. Is the Landlord entitled to a money owed or compensation for damage or loss?
3. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The parties provided oral testimony regarding the history and terms of the tenancy. The Tenants moved onto the rental property on or about September 1, 2014. Initially, the Tenants occupied a carriage house on the property, which they rented for \$300.00 per month. At that time, the Tenants also used a motorhome on the property for various household purposes. In or about May 2015, the Tenants moved into a rental unit on the property. Rent for the unit was \$650.00 per month. The Tenants also paid the Landlord \$50.00 per month per animal to keep their horses on the property.

For a number of reasons, the tenancy did not proceed smoothly. As a result, the Tenants vacated the rental property on or about June 30, 2016.

Landlord's Claims

The Landlord claims against the Tenants \$5,941.10 for damage caused to the rental property by the Tenants' horses, \$558.90 for damage to the rental unit, and \$100.00 for recovery of the filing fee.

First, the Landlord testified that fence rails were chewed by the Tenants' horses, exposing the wood beneath and leaving it vulnerable to rot. The Landlord also testified that the Tenants boarded other horses on the rental property without his knowledge, and that these horses kicked and caused damage to fences and other structures.

According to the Landlord, the damage could have been prevented had the Tenants installed electric fencing as they had agreed. He stated that without electric fencing, the horses would reach for grass on the other side of the fence, pushing against the fence and causing additional damage.

Further, the Landlord testified that there was excessive manure on the rental property when the Tenants left and that the pasture was in need of repair. Additionally, the Landlord stated the Tenants left a shed in which they stored their tack in poor condition, and that this resulted in a rat infestation.

Despite the above, the Landlord conceded during the hearing that the work has not been completed and that these aspects of his claim are based on his estimates only.

Second, the Landlord provided oral testimony regarding damage to the rental unit he stated was caused by the Tenants. Specifically, the Landlord stated the Tenants placed stickers over paint, nailed wood to the inside of the window frames in an attempt to insulate the rental unit, and left cigarette burns and stains in the carpet. He stated that the bathroom was a "disaster".

The Landlord confirmed during the hearing that the cost to repair the damage to the rental unit was estimated to be \$558.90, but acknowledged that this work had not been completed.

The Landlord also requested to recover the \$100.00 filing fee paid to make the Landlord's Application.

In reply, the Tenants disputed the Landlord's claims. They stated the fence was in poor condition when they moved into the rental property, and that installed electric fencing at

their own expense as soon as they moved onto the rental property. The Tenants also alleged there was considerable cow manure on the property when they moved in.

The Tenants also testified with respect to the condition of the main rental unit when they moved in. Specifically, they stated the carpets already had cigarette burns and needed to be replaced, and that there was mold in the bathroom.

In specific response to the Landlord's allegations that stickers applied by the Tenants damaged the paint on the walls of the rental unit, the Tenants stated they were vinyl stickers and would not have caused damage alleged by the Landlord.

Tenants' Claims

The Tenants' Application discloses a total monetary claim of \$3,594.00. However, as the hearing progressed, this amount was reduced to \$1,620.00.

First, the Tenants claimed \$1,300.00 on the basis that they were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property on June 23, 2016 (the "2 Month Notice"). A copy of the 2 Month Notice was included with the Tenants' documentary evidence.

Second, the Tenants testified they are entitled to be reimbursed \$20.00 for the cost of internet that was initially included with the rent. In support, the Tenants provided a copy of an e-Transfer in the amount of \$120.00 with a hand-written note indicating this amount included \$20.00 for internet service. The Tenants testified the remainder was the payment for their horses.

Third, the Tenants claimed \$200.00 for payments related to two horses for two months. According to the Tenants, this amount was paid in advance for two horses for the period from June 18, 2016 to July 18, 2016. However, the Tenants' testimony is that they vacated the rental property on June 26, 2016.

The Tenants also sought to recover the \$100.00 filing fee paid to make the Tenants' Application.

The claims described in this summary of the Tenants' evidence were repeated to the Tenants and they agreed that their claim totalled \$1,620.00.

In reply, the Landlord stated that the items being claimed by the Tenants were not set out in the Tenants' Application as required by the Rules of Procedure.

Analysis

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 sections 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.

In this instance, the burden of proof is on each of the parties in their respective claims to prove the existence of the damage or loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, they must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the claiming party did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Landlord's Claims

The Landlord has provided oral testimony in support of his claim of \$5,941.10 for damage caused to the rental property by the Tenants' horses, and \$558.90 for damage to the rental unit. However, I find that the Landlord has not discharged the burden on him under the above test. Specifically, I am not satisfied that the Tenants or their horses caused the damage alleged by the Landlord, or established the value of that loss. Indeed, there were no receipts or estimates for the work before me. Therefore, I find that the Landlord's claim must be dismissed, without leave to reapply.

As the Landlord's claim has been dismissed, I decline to make an award for recovery of the filing fee.

Tenant's Claims

The Tenants provided oral testimony and documentary evidence in support of their monetary claim. First, the Tenants claimed \$1,300.00 – the equivalent of two month's rent – for being issued with a 2 Month Notice on June 23, 2016. While section 51 of the *Act* does provide for payment of one month's rent upon issuance of a notice to end tenancy for landlord's use of property, it is anticipated that the tenant will stay until the effective date of the notice. In this case, the effective date of the 2 Month Notice was August 31, 2016. When, upon receipt of a notice to end tenancy for landlord's use of property, a tenant chooses to end the tenancy early, section 50 of the *Act* provides that the tenant must give the landlord at least 10 days' written notice. The Tenant is only obligated to pay rent to the effective date of the 10 day notice. I was not referred to any documentary evidence or oral testimony that a 10 day notice was provided to the Landlord in accordance with section 50 of the *Act*.

Put another way, the issuance of a notice to end tenancy for landlord's use of property triggers a tenant's entitlement to compensation of one month's rent under section 51 of the *Act*. However, a landlord remains entitled to receive rent for one of the two months leading up to the effective date of the notice, unless the tenant issues a 10 day notice in accordance with section 50 of the *Act*. In this case, the Tenants confirmed during their oral testimony that they vacated the rental unit before the end of June 2016 and did not pay rent in July 2016. Further, the Tenants did not refer me to any documentary evidence or oral testimony to indicate a 10 day notice was given to the Landlord. Accordingly, while the Tenants may be entitled to compensation of \$650.00, they were also required to pay rent for July 2016, having not provided the Landlord with notice under section 50 of the *Act*, or any notice. I find that the amounts owing cancel each other out and that the Tenants are not entitled to the compensation they sought. This aspect of the Tenants' claim is dismissed.

Second, with respect to the \$20.00 payment for internet service, I am not satisfied it was a term of the tenancy agreement that internet was included with the rent. Indeed, a copy of the rental advertisement, included with the Tenants' documentary evidence states: "Rent includes everything except phone and internet." This aspect of the Tenants' claim is dismissed.

Third, the Tenants claimed an entitlement to \$200.00 they say they paid to keep their horses on the property for the months of July and August 2016. However, I am not satisfied this payment was made and this aspect of the Tenants claim is dismissed.

As the Tenants' claim has been dismissed, I decline to award recovery of the filing fee.

Conclusion

The Landlord's Application is dismissed, without leave to reapply.

The Tenants' Application is dismissed, without leave to reapply.

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 17, 2016

Residential Tenancy Branch