



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bradshaw Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with monetary applications by the landlord and the tenants. The landlord and both tenants participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on June 24, 2015 as a fixed-term tenancy to end on June 30, 2016. Rent in the amount of \$940.00 was payable in advance on the first day of each month. The tenancy agreement contains a clause indicating that if the tenants vacated before the end of the fixed term, they would be required to pay liquidated damages of \$450.00. The tenancy agreement also contains a clause indicating that if the window coverings are new or professionally cleaned at the outset of the tenancy, the tenants agree to pay to have them professionally cleaned at the end of the tenancy.

At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$470.00. On June 24, 2015 the landlord and the tenants carried out a move-in inspection and completed a condition inspection report.

On February 15, 2016 the tenants gave the landlord notice that they intended to vacate the rental unit by April 1, 2016.

The tenancy ended on March 26, 2016. The landlord and the tenants carried out a move-out inspection on that date. The tenants agreed that the landlord was entitled to \$99.75 for carpet cleaning, but they disagreed that the landlord was entitled to \$45.00 for window cover cleaning or \$450.00 for liquidated damages. The tenants provided their forwarding address in writing on the report. The landlord filed their application to keep the security deposit on April 8, 2016.

Tenants' Application

The tenants initially applied for orders that the landlord comply with the Act, do emergency repairs and provide services or facilities required by law, as well as for monetary compensation. On April 19, 2016, after the tenancy had ended and the landlord had filed their claim, the tenants amended their application to apply for total monetary compensation of \$2,759.78.

The tenants stated that the landlord materially breached the tenancy agreement a number of times during the tenancy. The tenants stated that the landlord did not provide them with an emergency number as required. The tenants stated that because the landlord did not immediately repair their freezer they lost a large number of items. The tenants stated that the freezer did not work properly for five months. The tenants stated that for one month the landlord failed to address the mould problem in the unit. The tenants stated that the landlord forced the tenants to move out five days before the tenancy ended. The tenants stated that the landlord applied late to keep the security deposit.

The tenants claimed compensation as follows:

1. \$187.50 for five days of prorated rent from March 27 to 31, 2016;
2. \$242.28 for food loss when the freezer was not immediately repaired – the tenants provided photographs of the food from their freezer; a spreadsheet showing the regular price for each of these items; and phone records showing the tenants' attempts to call the landlord about the freezer;
3. \$1,390.00 (1.5 months of rent) due to the presence of black mould – the tenants submitted photographs showing mould in one corner and communications between themselves and the landlord regarding the mould; and
4. \$940.00 for double recovery of the security deposit.

The landlord's response to the tenants' application was as follows. The landlord stated that they did not force the tenants to move out. Rather, the landlord and the tenants agreed that the move-out inspection would occur on March 26, 2016. The landlord stated that at the move-out inspection the tenants wanted to keep the keys until the end of the month, but the landlord told them that if they did so, he was not going to do the move-out inspection that day.

The landlord stated that they did provide the tenants with an emergency number; the number is the same as the office number but it gets forwarded after hours. The landlord stated that the freezer issue was not an emergency, and in any case they repaired the freezer the next day. The landlord stated that they suggested that the tenants try to preserve their frozen goods by purchasing ice or an ice chest, or storing the goods in the tenant's mother's freezer, as she lived a short distance away. The landlord stated that the tenants took no steps to attempt to preserve their food and mitigate their loss. The landlord submitted that the tenants caused the damage to the freezer themselves by filling it too full.

The landlord stated that the tenants had a clothes hamper in the corner where mildew built up, but after the tenants cleaned it, there was no further issue. The landlord stated that when the tenants complained that the wall was soft, the landlord checked the wall but the tenant could not point it out.

The landlord stated that they did make their application in time, and the tenants were not entitled to double recovery of the security deposit.

Landlord's Application

The landlord has claimed compensation as follows:

1. \$99.75 for carpet cleaning;
2. \$45.00 for drapes cleaning – the landlord stated that as per the tenancy agreement the tenants are required to have the drapes cleaned at the end of the tenancy;
3. \$35.00 repairs to the thermostat and wall – the landlord stated that the thermostat cover was missing and the tenants appeared to have cut a hole in the wall where there was previously mould; and
4. \$450.00 for liquidated damages, as per the tenancy agreement – the landlord stated that the liquidated damages amount represents a genuine pre-estimate of the costs of re-renting.

The tenants acknowledged the claim for carpet cleaning but disputed the balance of the landlord's claim.

The tenants stated that at the beginning of the tenancy the drapes were stained and the thermostat cover was not there. The tenants stated that they were rushed through the move-in inspection, which is why these items were not noted on the move-in condition inspection report.

The tenants stated that they did not cut into the wall; rather, after they had cleaned the mould away as instructed by the landlord, the wall became very soft and began crumbling.

The tenants stated that they should not have to pay the liquidated damages amount because the landlord materially breached the tenancy agreement several times. Further, the tenants submitted, the landlord had mutually agreed with the tenants that the tenancy ended on March 26, 2016. Finally, the tenants submitted that the landlord would not have incurred \$450.00 to re-rent the unit, and this amount is punitive.

Analysis

Tenants' Application

I find that the tenants are not entitled to any portion of their claim.

The tenants gave notice that they were vacating the rental unit by April 1, 2016. I find no evidence that the landlord forced the tenants to move out on March 26, 2016. The parties had agreed that the move-out inspection would occur on that date. Further, there is no evidence that the landlord re-rented the unit and collected rent for any days before April 1, 2016. The tenants are therefore not entitled to the return of any prorated rent for the last five days of March 2016.

The tenants are not entitled to compensation for their frozen goods. The landlord responded to the tenants' call about the freezer and had it repaired within one day of being made aware of the problem. The landlord made suggestions regarding how the tenants might mitigate their loss by preserving some, if not all, of the frozen goods, but the tenants did little to attempt to reduce the loss. There is insufficient evidence that the landlord was negligent in maintaining or repairing the freezer.

Similarly, the tenants failed to provide sufficient evidence to establish that the landlord was negligent in addressing the mould problem. The tenants themselves may have

caused the mildew or mould problem, if they kept their clothes hamper, and particularly any damp clothes or linens, in that corner. The landlord attended to inspect the spongy or soft wall, and the tenant could not tell the landlord where that spot was. Finally, the tenants did not provide sufficient evidence to show any loss they suffered as a result of the presence of any mould.

The tenants provided their forwarding address in writing on March 26, 2016, and the landlord made their application to keep the security deposit on April 8, 2016, which is within the required time frame to claim the deposit. The tenants are therefore not entitled to recovery of the security deposit.

Landlord's Application

As the tenants agreed with the carpet cleaning costs, I grant the landlord \$99.75 for carpet cleaning.

The tenancy agreement states that the tenants would be required to have the window coverings professionally cleaned at the end of the tenancy if the coverings were new or had been professionally cleaned at the beginning of the tenancy. The landlord did not provide evidence that the window coverings were new or had been professionally cleaned at the beginning of the tenancy.

I am not satisfied that the tenants cut a hole in the wall. Photographs of this corner show crumbling material where there previously was mould, and I accept the tenants' explanation as credible. The move-in condition inspection report is silent in regard to the condition of the thermostat cover, and the missing cover is not noted on the move-out portion of the report either. I therefore dismiss this portion of the landlord's claim.

I find that the landlord is entitled to the liquidated damages amount. The landlord does not have to prove that they actually incurred this amount; it is to be a genuine pre-estimate of the costs of re-renting. I do not find the amount of \$450.00 in this case to be punitive. The tenants did not establish that the landlord materially breached the tenancy agreement. A material term is a term that goes to the heart of the agreement and the slightest breach of that term can end the agreement. The landlord responded very quickly to the tenants' complaint about their freezer, and the tenants did have an emergency number for the landlord. I do not find the tenants' other allegations of material breaches to have any substance.

Filing Fees

As the tenants' application was not successful, they are not entitled to recovery of the filing fee for the cost of their application.

As the landlord's application was successful, they are entitled to recovery of the \$100.00 filing fee for the cost of their application.

Conclusion

The tenants' application is dismissed in its entirety.

The landlord is entitled to \$649.75. I order the landlord to retain the security deposit of \$470.00 in partial compensation of this amount, and I grant the landlord an order under section 67 for the balance due of \$179.75. This order may be filed in the Small Claims Court and enforced as an order of that 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: November 6, 2016

Residential Tenancy Branch