



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRAVELLING MOON PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing.

The Landlord applied requesting a monetary order for unpaid rent; to keep all or part of a pet damage deposit or security deposit, and to recover the cost of the application fee.

The Tenants applied for compensation for damage or loss under the Act, regulations or tenancy agreement; for the return of the security deposit and to recover the cost of the application fee.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

Issues to be Decided

- Is the Landlord entitled to compensation for unpaid rent?
- Are the Tenants entitled to the return of the security deposit?
- Can the Landlord retain the security deposit in partial satisfaction of her claim?
- Are the Tenants entitled to money owed or compensation in the amount of \$5,476.00 for damage or loss under the Act, Regulation or tenancy agreement?
- Are the parties entitled to recover the cost of the filing fee

Background and Evidence

The parties testified that the tenancy commenced on June 1, 2015, as a one year fixed term tenancy. Rent in the amount of \$1,350.00 was due on the first day of each month. The Tenants paid a security deposit of \$675.00 to the Landlord.

The Landlord provided a copy of the tenancy agreement.

The Parties testified that the Tenants moved out of the rental unit on May 20, 2016.

Landlord's Application

May 2016 Rent \$1,100.00

The Landlord testified that the Tenants gave notice to move out of the rental unit but failed to pay the rent for May 2016. The Landlord is claiming \$1,350.00 for loss of rent for the month of May 2016. The Landlord testified that there was an agreement to compensate the Tenants for noise, and submitted that \$250.00 should be deducted from the \$1,350.00. The Landlord is seeking \$1,100.00 for May 2016, rent.

In response the Tenant submitted that the Landlord did not accept a money transfer for May 2016, rent. However, the Tenant testified that the rent for May 2016, was never paid.

During the hearing the parties agreed to settle this issue. The Parties agreed that the Tenants will be responsible to pay rent for 20 days of May 2016. The amount of rent was determined by dividing \$1,100.00 by 31 days and multiplying the result by 20 days. $(1100 / 31 = 35.48 \times 20) = \709.60 .

Lock and Key Change

The Landlord is claiming the amount of \$121.80 for the cost of a lock change. The Landlord testified that the Tenants were provided two sets of keys but they did not leave the apartment keys when they moved out. The Landlord had to have the locks changed on the apartment door. The Landlord provided a copy of a receipt for the cost of the lock change. The Condition Inspection Report provided by the Landlord indicates the Tenants were provided with two sets of keys at the start of the tenancy.

In response, the Tenant T.C. testified that her co-Tenant M.C. returned the apartment keys to the Landlord's agent, a realtor. The Tenants submit that the Landlord threatened to change the locks before the end date of the tenancy. The Tenants provided a copy of a letter they received from the Landlord stating the locks will be changed on May 24, 2016.

In response, the Landlord stated that her agent never advised her that the Tenant had returned the keys, and she is 100% sure that her agent would have told her. She stated that she never asked the agent if the keys were returned.

Cleaning and Supplies

The Landlord is seeking compensation for cleaning the rental unit and the cost of cleaning supplies.

The Landlord is seeking \$167.89 for cleaning the rental unit.

The Landlord is also seeking \$50.00 for sanding and bleaching a counter top and is seeking \$49.81 for cleaning supplies for the toilet and oven. The Landlord testified that the countertop is approximately eight years old.

The Landlord testified that she had the rental unit cleaned in preparation for the next Tenant. She testified that she hired a woman to clean for 6 hours at a rate of \$25.00 per hour. The Landlord provided photographs of the rental unit. The Landlord provided a copy of a Condition Inspection Report that the parties completed at the start of the tenancy. The Condition Inspection Report was completed by the Landlord at the end of the tenancy when the Tenant did not attend the move out inspection. The Condition Inspection Report indicates that areas of the rental unit were left dirty. The Landlord provided color photographs taken of the interior of the rental unit at the end of the tenancy. The Landlord provided receipt for the cleaning costs.

In response, the Tenant testified that the apartment was left in a clean manner. The Tenant T.C. submitted that she was no longer living there, but her partner did the cleaning. The Tenant testified that the toilets were already stained when they moved into the unit. The Tenants submitted that the rental unit was not clean when they moved in and they left it in the same state when they moved out. The Tenant testified that she put the oven on self clean. The Tenant testified that the wood countertop was water damaged and not in good shape when she moved into the unit. She submitted that it doesn't appear that the countertop is treated with anything. The Tenants provided a USB data stick containing color photographs of the interior of the rental unit.

The Tenant agreed to pay the amount of \$49.81 for the cost of the cleaning supplies.

Cheque Fee

The LL is seeking \$7.50 for a bank charge. She testified that the Tenants stopped payment on a rent cheque and the bank charged the Landlord a fee.

In response, the Tenant testified that she agrees to pay the \$7.50 bank charge.

Postage and Supplies

The Landlord is seeking \$25.00 for the cost of postage and supplies for preparing for the hearing.

The Landlord was informed that the Act does not specifically allow for parties to claim the costs of serving documents and preparing for dispute resolution. These costs are part of doing business as a Landlord. The Landlords claim for \$25.00 was dismissed.

Security Deposit

Residential Tenancy Policy Guideline # 17 Security Deposit and Set Off states

The landlord has 15 days, from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to return the security deposit plus interest to the tenant, reach written agreement with the tenant to keep some or all of the security deposit, or make an application for dispute resolution claiming against the deposit.

If the landlord does not return or file for dispute resolution to retain the deposit within fifteen days, and does not have the tenant's agreement to keep the deposit, the landlord must pay the tenant double the amount of the deposit.

The Guideline also states that the right of a Landlord to obtain the Tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:

- *the landlord does not offer the tenant at least two opportunities for inspection as required; and/or*
- *having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it.*

Section 36 of the Act states that the right of a Tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if the Landlord offered 2 opportunities for inspection and the Tenant has not participated on either occasion.

The Landlord is requesting to keep all or part of the \$675.00 security deposit in satisfaction of her claim for unpaid rent and damage.

The Landlord testified that the Tenant did not participate in a move out inspection. She testified that the Tenant was notified of the move out inspection date of May 31, 2016. She testified that she initially did not hear anything back from the Tenants, until she was informed by Tenant M.S. that he was not available for the date the Landlord proposed. The Landlord testified that the move out inspection was rescheduled for May 25, 2016. The Landlord provided copies of emails sent to the Tenants informing the Tenant of the move out inspection date.

The rental unit was furnished and Landlord provided a copy of a furnishings inventory. The Landlord provided a copy of a signed and dated Condition Inspection Report showing a move in inspection dated July 1, 2015. The Landlord provided a copy of a Condition Inspection Report showing a move out inspection conducted May 25, 2016.

The Report is not signed by the Tenants. The report states: Tenant not available for walk through.

In response the Tenant testified that the Landlord denied an appropriate time for a walk through. She testified that M. S. was not available for the move out inspection and proposed a different date. She testified that the Landlord did not agree and set a new date.

The Landlord provided a copy of an email dated May 23, 2016, from the Tenants providing their forwarding address.

Tenant's Application

The Tenant's application indicates that Tenants are seeking compensation in the amount of \$5,476.00 as follows:

Loss of Quiet Enjoyment

The Tenants are seeking compensation in the amount of \$3,500.00. The Tenants submitted that the rental unit is situated above a commercial space that was used for concerts and weddings and art galleries. The Tenant testified that the unit was misrepresented. The Tenant testified that they were not informed that there would be functions below them. The Tenant testified that the functions were noisy and some of the noise disruptions continued until 10 pm and as late as 1:00 am, and were a weekly occurrence that affected the Tenants quiet enjoyment of the rental unit.

The Tenant submitted that they tolerated the noise inconvenience until it began to compromise his education and training. The Tenant submit that the Landlord was well aware of noise issues dating back many years. The Tenant submitted that the issue was a massive and debilitating environment.

The Tenant testified that she brought the issue of noise to the attention of the Landlord and they reached an agreement to compensate the Tenants in the amount of \$250.00 per month when events disrupt the Tenants.

The Tenant submitted that they are seeking an additional \$350.00 per month compensation for loss of quiet enjoyment for the 10 months they lived in the rental unit. The Tenant testified that she received compensation for the months of December 2015; January 2016, February 2016; and March 2016. The Tenants request for compensation is in addition to the compensation they have already received from the Landlord.

In response, the Landlord testified that before the Tenants moved in, she made an inquiry with owner of the commercial property to determine whether there would be events, and found out there was no lease for the property. She testified that a lease for the commercial property was signed on September 1, 2015. She testified that the lease holder was holding events without proper licences.

The Landlord testified that she empathized with the Tenants and tried to find them something else to rent and tried to provide them with a list of events but was not able to. The Landlord informed the Tenants in late October 2015, that she was willing to release them from their 1 year lease as of December 1, 2015. The Landlord provided a copy of an email dated October 25 regarding the offer to release the Tenants from the lease.

The Landlord testified that she reached an agreement with the Tenants to compensate them when there were events below them that disrupted their quiet peaceful enjoyment of the unit. She testified that the Tenants were asked to inform her when there were events that disturbed them, and she would reduce their rent in the amount of \$250.00 per month in compensation.

Car Damage

The Tenant is claiming the amount of \$400.00 for damage to her vehicle. The Tenant testified that her vehicle was damaged while parked outside the rental unit on the street. She submitted that due to the constant parties and due to the Landlord misrepresenting the property, the Landlord is responsible to pay the for the damage. The Tenant did not provide a receipt for the cost of repair of her vehicle.

In response, the Landlord testified that the tenancy agreement between the parties provides one parking spot. The Landlord submitted that she is not responsible for the damage to the Tenant's vehicle that was parked on the street.

Heating Costs

The Tenants are seeking \$250.00 in compensation for heating costs. The Tenant T.C. testified that windows in the unit had seals that were broken and she could feel cold air coming in. The Tenant testified that she brought the issue to the attention of the Landlord. The Tenant is seeking \$50.00 in compensation for five months from November to March. The Tenants did not provide a copy of their utility bills.

In response the Landlord testified that there is one window in the rental unit that is problematic. She testified that she repaired it twice, but the seal pops off. She testified that the window is 25 feet up and needs repair. The Landlord submitted that she does not agree to pay the \$250.00 that the Tenants are seeking.

Tenants Time

The Tenants submitted that they are seeking compensation in the amount of \$675.00 for the time it has taken them to compile the response to the Landlord's frivolous claim. The Tenant M.S. submitted that it took 25 hours at a rate of \$27.00 per hour.

Security Deposit

The Tenants are seeking the return of their security deposit in the amount of \$675.00. The Tenant testified that there was no agreement to allow the Landlord to keep the deposit.

Analysis

Landlord's Claims

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

May Rent

The Tenants never paid the rent for May 2016. During the hearing the parties agreed that the Tenants will pay for 20 days of rent for May 2016. I find that Tenants owe the Landlord \$709.60 for May 2016 rent.

Lock and Key

The Landlords claim for \$121.80 is dismissed. While I find that the Tenants were provided two sets of keys at the start of the tenancy, I am not satisfied that the Landlord took reasonable steps at the end of the tenancy to determine whether the Tenants returned the keys to the Landlord's agent. The Landlord testified that she never asked her agent if the Tenants had returned the keys. When two parties provide equally believable but opposing testimony, the burden of proof rests with the applicant. The Landlord has provided insufficient evidence to prove this claim.

Cleaning Supplies

Section 37 of the Act states when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The Tenant agreed to pay the Landlord the amount of \$49.81 for cleaning supplies.

With respect to the Landlords claim for \$167.89, I prefer the evidence of the Landlord that the rental unit was left dirty. The Tenants submitted that the rental unit was not clean when they moved in and they left it in the same condition when they moved out. The Tenants should have addressed the state of repair of the unit the unit at the start of the tenancy. The Condition inspection Report indicates the rental unit was clean at the time of the move in.

I dismiss the Landlords claim for \$50.00 for sanding and bleaching the countertop. The countertop is old, and the Condition Inspection Report indicates there was water marks present at the start of the tenancy.

I find that the tenants are responsible to pay the Landlord \$49.81 for cleaning supplies and \$167.89 for cleaning the rental unit.

Bank Charge

The Tenant agreed to pay the Landlord \$7.50 for the cost of the bank charge. I find that the Tenants owe the Landlord \$7.50.

Security Deposit

Section 44 of the Act states that a tenancy ends if a Tenant vacates the rental unit.

I find that the Landlord failed to comply with the requirements under section 38 of the Act regarding the security deposit. I find that the tenancy ended on May 20, 2016, the date the Tenants vacated the rental unit. The Tenants provided their forwarding address on May 23, 2016. When the Landlord received the forwarding address on May 23, 2016, she had 15 days to return the deposit, or apply for dispute resolution. The Landlord applied for dispute resolution to keep the deposit on June 14, 2016.

I find that there was no written agreement between the parties allowing the Landlord to keep the security deposit.

I also find that the Tenants extinguished their right to the return of the security deposit because they did not participate in a move out inspection on two occasions.

While both parties are in breach of the Act, I find that the Tenants breached first.

I order that the Landlord can keep the security deposit in the amount of \$675.00 in partial satisfaction of the claim for May 2016, rent.

Tenant's Claims

Residential Tenancy Policy Guideline #6 Entitlement to Quiet Enjoyment states that a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- *reasonable privacy;*
- *freedom from unreasonable disturbance;*
- *exclusive possession, subject to the landlord's right of entry under the Legislation; and*
- *use of common areas for reasonable and lawful purposes, free from significant interference.*

A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these. Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment. In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

Residential Tenancy Guideline #16 Claims in Damages states:

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

Based on the evidence and testimony before me, and on a balance of probabilities, I find as follows:

Loss of Quiet Enjoyment

The Landlord did not directly cause the unreasonable disturbances and took steps to try and deal with problem. The Landlord offered to release the Tenant's from their lease obligations. I find that the parties entered into an agreement for compensation in consideration of the noise disruptions. The Tenant's chose to remain in the tenancy and I find that the Tenants have already been compensated in the amount of \$250.00

per month on occasions where there was noise. I decline the Tenant's request for further compensation.

The Tenants claim for \$3,500.00 is dismissed.

Vehicle Damage

I dismiss the Tenant's claim for \$400.00 for damage to the Tenant's vehicle. The Landlord is not responsible for the damage done to the vehicle while parked on the street.

Heating

I find that the window in the rental unit needed repair and that the Tenant brought the issue to the attention of the Landlord. I accept that the defective window seal caused the Tenant's heating costs to increase. I find that the Tenants have established a loss, but have failed to explain how they established the value of the loss to be \$50.00 per month. I find that no significant loss has been proven; however I find it reasonable to award the Tenants compensation in the amount of \$100.00.

Tenants Time

The Tenant's claim in the amount of \$675.00 is dismissed.

An Applicant can only receive compensation for the direct costs of breaches of the Act or the tenancy agreement under Section 67 of the Act, but "costs" incurred with respect to filing a claim for compensation are limited to the recovery of the filing fee, which is specifically allowed under Section 72 of the Residential Tenancy Act. As a result, the Tenant's claim for compensation for responding to the Landlord's claim is denied.

Set Off of Claims

The Landlord has established a monetary claim in the amount of \$934.80.

The Landlord can retain the security deposit of \$675.00 in partial satisfaction of her claim.

The Tenants have established a monetary claim in the amount of \$100.00.

After setting off the amounts of the awards, I grant the Landlord a monetary order in the amount of \$159.80. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord and Tenants were partially

successful in their applications, I decline to order either party to pay the other for the cost of the filing fee for this hearing.

Conclusion

After setting off the amounts owed by each party, I grant the Landlord a monetary order in the amount of \$159.80. This order must be served on the Tenants and may be enforced in Provincial 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: January 06, 2017

Residential Tenancy Branch