Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code(s): MND, MNR, MNSD, MNDC, FF

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit; unpaid rent and utilities; damage or loss under the Act, regulations or tenancy agreement; and authorization to retain the tenant's security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

This proceeding was held over two dates. At the end of the first hearing I ordered the landlords to produce additional evidence and the hearing was adjourned. An interim decision was issued to the parties after the first hearing date and should be read in conjunction with this decision.

During the period of adjournment I received additional documentation from the landlords; however, I noted that some documentation that I had ordered was not provided. I confirmed with the landlords that they had not provided all of the documentation that I had ordered. I also confirmed that the tenants were in receipt of the same documents that were submitted to me.

It should be noted that in the interim decision I had recognized that due to time constraints the landlords had not been provided the opportunity to rebut the tenants' testimony at the first hearing. At the reconvened hearing, the landlords chose not to take the opportunity to rebut the tenants' testimony and were of the view that their position had been sufficiently put forth during the first hearing. At the reconvened hearing, the tenants did not provide any new arguments in light of the additional documentation but merely summarized the position that they had put forth during the first hearing.

I have made this decision based upon the oral submissions of both parties, documentation provided prior to the first hearing and I have taken into account the additional documentation that was, and was not, provided during the period of adjournment. Although I have considered all of the evidence and submissions presented to me, with a view to brevity in writing this decision, I have only summarized the parties' respective positions and referred to the most relevant facts and evidence.

On another note, in their written submissions, it appeared as though the tenants were requesting compensation from the landlords for alleged breaches by the landlords, including a request for doubling of the security deposit. I did not consider their request for compensation as

I am tasked with resolving the Application for Dispute Resolution before me and the tenants have not filed an Application. The tenants remain to file an Application if they choose to pursue the landlords for compensation within the statutory time limit for filing an Application.

Included in the landlords' Application was a request to retain the tenants' security deposit in partial satisfaction of their claims, including those that are not damage, such as unpaid rent and utilities. As for doubling of the security deposit, Residential Tenancy Policy Guideline 17*: Security Deposits and Set-Off* provides, in part, under Set-Off:

> If a landlord does not return the security deposit or apply for dispute resolution to retain the security deposit within the time required, and subsequently applies for dispute resolution in respect of monetary claims arising out of the tenancy, any monetary amount awarded will be set off against double the amount of the deposit plus interest.

Accordingly, I have considered whether the landlords may retain all or part of the security deposit, and whether the security deposit should be doubled.

Issue(s) to be Determined

1. Have the landlords established an entitlement to compensation from the tenants as claimed?
2. Are the landlords authorized to retain all or part of the security deposit and should the security deposit be doubled?

Background and Evidence

The tenancy started on August 1, 2015 on a month to month basis. The tenants paid a security deposit of $600.00 and were required to pay rent of $1,200.00 on the first day of every month. The rental unit is a mobile home. The landlords did not prepare a move-in or move-out inspection report. The tenants vacated the rental unit on February 1, 2016. The tenants sent their forwarding address to the landlords via registered mail on February 1, 2016 and via email and via social media. The landlords prepared a written response to the tenant's request for their security deposit dated February 8, 2016. A search of the registered mail tracking number shows that the landlords received the registered mail on February 11, 2016. The landlords filed this application with on February 22, 2016.

After hearing from the parties, it was clear that the tenancy relationship became strained and the tenancy ended after there was a water leak in the rental unit. The tenants gave notice of their intention to end the tenancy on January 9, 2016 to be effective February 1, 2016. The landlord ripped up much of the flooring material on January 12, 2016 to expose the wet subfloor and proceeded to repair the water damage in the rental unit after the tenants vacated. The water leak and the damage that resulted was the primary source of the dispute between the parties.

Below, I have summarized the landlords' claims against the tenants and the tenant's responses.

Unpaid Rent for February 2016 - $1,200.00

The landlords submitted that the tenants breached the Act by failing to give one full month of notice to end tenancy. The landlords testified that they finished the repairs to the rental unit to rectify the water damage and started advertising the unit for rent in the latter part of February 2016. The landlords were successful in finding new tenants starting April 1, 2016.

The tenants submitted that the rental unit was largely uninhabitable after the water leak. Mould had formed on the wet subfloor and they had a rodent infestation. Due to the wet flooring and mould they were unable to use much of the rental unit and their family of five was sleeping in one bedroom. The tenant pointed out that the landlords expected the tenants' children to continue to use the bedrooms despite the appearance of mould. The tenant stated that they offered to move out of the rental unit temporarily to accommodate the repair efforts but the landlords did not respond to their offer so they gave a notice to end tenancy. The tenants submitted that the landlords did not intend to take any action to finish the repairs until after the tenants moved out as seen in a text message communication between the parties.

The tenants pointed out that in giving their notice to end tenancy the landlords indicated they would hold the tenants responsible for February 2016 rent if they did not find replacement tenants; however, the landlords did not advertise the unit in January 2016.

Hydro bill -- $100.00 estimated (amended to $126.33)

The landlords submit that the tenants were responsible for paying for their own hydro under the tenancy agreement but the hydro account was in the landlord's name. At the time of filing, the landlords estimated that the tenants owed hydro of $100.00. During the first hearing date the landlord stated that the actual bill that came in was for $163.25. I ordered the landlords to produce the hydro bill during the period of adjournment, which they did. The hydro bill that was produced shows hydro charges of $126.33 for the period of January 6, 2016 through March 4, 2016.

The tenants were of the position that the hydro bill seemed high but they were agreeable to paying hydro for the period of time they were obligated to pay rent.

Cleaning -- $100.00

The landlords seek compensation for five hours spent cleaning the rental unit after the tenants vacated. The landlords described how additional cleaning was required in the bathroom, the floors had to be washed, the fridge needed cleaning, and inside cupboards needed cleaning.

The landlords provided photographs that they stated were taken within a week of the tenancy ending.

The tenants were of the position they left the rental unit reasonably clean and pointed to photographs they took of the rental unit. The tenants questioned the landlords' photographs as they were uncertain as to what some pictures depicted and the date they were taken. The tenants acknowledge not cleaning under the fridge because it was not on rollers.

Damage -- $6,720.00

The landlords submitted that while the tenants went out of town between the dates of December 13, 2015 through January 3, 2016 there was a water leak in the rental unit. The landlords stated they were not certain as to the reason the water leaked but that it appeared as though a connection in the water line had ruptured under the bathroom vanity. The landlords submit that the tenants should be held liable to compensate the landlords for the damage that resulted from the ruptured water line because the tenants: failed to notify the landlords that they were out of town, as required in their tenancy agreement; the tenants failed to have someone check the rental unit every day while they were out of town; the tenants failed to inform them of the water leak until January 5, 2016; and, the tenants failed to carry tenant's insurance as required under the tenancy agreement.

The tenancy agreement provides that the tenants "agree to notify the Landlord of an intended absence of more than seven days and will permit the Landlord to enter the premises during the absence if reasonably necessary".

As for the landlord's insurance coverage, the landlords acknowledge that they investigated whether they could make a claim under their insurance policy but it was determined that they were not eligible for coverage. Initially, the landlords submitted that they were denied insurance coverage because the tenants were out of town; however, the landlords provided a copy of a letter dated January 11, 2016 from their insurance carrier that provided the reason for denying the landlords coverage. The letter indicates the landlords were not covered under their policy for:

> 7. WATER ESCAPE, RUPTURE, FREEZING. This peril means loss or damage caused by:
>
> > (ix) caused by freezing, or by the escape of water from any appliance located within the portion of your dwelling heated during the usual heating season if the occupants have been away from your premises more than 4 consecutive days. If you or the occupants had arranged for a competent person to enter your dwelling daily to ensure that heating was being maintained, or if your heating system is connected by a monitored heating alarm to a station providing 24-hur service, or

> if you or the occupants had shut off the water supply and had drained all the pipes and appliances, you would still be insured.

The landlords seek to recover $6,720.00 from the tenants for water damage to the rental unit. This amount is the sum of two amounts: $4,384.92 and $2,335.50. The landlord stated that he is in the construction industry and he produced an "estimate" dated January 21, 2016 in the amount of $4,384.92. The estimate includes a charge of $1,365.00 for labour to remove baseboards, trim and existing subfloor in two bedrooms; re-sheet floor; install new flooring in both bedrooms; install new baseboards and trim; fill holes, caulk and paint baseboards and trim. The estimate includes a charge of $3,019.92 for materials "for all damaged areas (kitchen, hall, laundry, bathroom, bedrooms).

The landlords provided a "quote" dated January 18, 2016 from a third party who proposed to provide labour to remove appliances and baseboards, remove existing subfloor and re-sheet kitchen, hallway, bathroom and laundry room, prepare underlay and install linoleum, reinstall baseboards and appliances. The quote indicates that the customer was to provide materials.

The tenants submit that the water leak was likely the result of the pipes freezing when the furnace malfunctioned. The tenants are of the view that the leak was the result of freezing because the person who was checking on their cats while they were out of town notified the tenant that the house was very cold on December 26, 2015 and she had to re-start the furnace. When the tenants returned home on January 3, 2016 the furnace was not working again. On January 6, 2016 the furnace was inspected by a furnace technician and it was determined that it was very old and should be replaced but the landlords chose not to replace it. When the tenants enquired with the landlords as to what they were to do for heating the landlords told them to use the wood stove.

The tenants submitted that they were uncertain as to how long they were going to be away for the holidays but when the landlord emailed them on December 20, 2015 to enquire if they were out of town the tenants responded and confirmed that they were. Accordingly, the tenants were of the view that they met their obligation to notify the landlord of their absence.

The tenants submitted that they had a competent person enter the rental unit nearly every day as this person was feeding and checking on the tenants two cats while they were away. This person notified them on December 26, 2015 that the rental unit was very cold and that she had to get the furnace running again. Then on December 27, 2016 this person notified them that she had seen water on the floor in the bathroom and just outside the bathroom door and in response she had turned off the water supply, mopped up the water and turned on a fan and heater. The tenants figured the issue had been sufficiently addressed and did not think it was necessary to notify the landlords at that time.

The tenants were of the position they were not required to carry tenant's insurance. The tenants pointed to the tenancy agreement where it provides that the tenants would be

responsible for paying for tenant's insurance in the section that provides for the payment of utilities. However, the tenants do not interpret this to mean they were required to carry tenant's insurance.

The tenants questioned the veracity of the landlord's estimate and the quote by the third party. The tenants were of the position that the landlords should produce an estimate from an outside party if the landlord did the work himself. The tenants also questioned the veracity of the quote since it is dated January 21, 2016 and the person who had provided the quote had not entered their unit in January 2016. The tenants also pointed out that they tried to look up contact information for the third party so they could ask questions about the quote but they could not find a telephone number for him.

The landlord stated he is in the business of doing renovations and that the estimate he provided is an estimate as to what he would charge a customer for a similar project. The landlord explained that the person who provided the quote had installed flooring in the rental unit in the past and was familiar with the room sizes. The landlord acknowledged that the person who provided the quote is the person he works with often where linoleum is installed in his projects.

I noted that the estimate prepared by the landlord included a breakdown for labour and materials. Since the landlords had not provided an estimate from an outside source, with a view to determinate the veracity of the landlord's estimate I ordered the landlords provide me with the receipts for the material purchases. I also ordered the landlords to provide proof of payment to the third party who provided the quote for the installation of the linoleum. During the period of adjournment I did not receive any receipts for the purchase of materials. As for proof of payment to the third party, the landlords produced an "Invoice" dated February 19, 2016 for the dame amount indicated on the quote with a hand written notation "pd full cash". During the reconvened hearing, the landlord acknowledged that he did not purchase any materials for which he has a receipt. Rather, he explained that he had materials that were left over from his other projects or he acquired over-stock from other contractors. As for the proof of payment to the third party the landlord explained that he paid cash because sub-contractors often want to avoid paying tax.

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 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 consideration of everything before me, I provide the following findings and reasons.

Unpaid Rent

The landlords seek to recover unpaid rent from the tenants for the month of February 2016 on the basis the tenants failed to give a full month of notice. The landlords are correct that in order for the tenants to end a month-to-month tenancy tenants are required to give the landlord one full month of written notice under section 45 of the Act. It was undeniable that the tenants gave less than a full month of written notice. However, I find also find that if the landlords expect to hold the tenants responsible to give a full month of written notice and end the tenancy as of February 29, 2016 the tenants would also be entitled to and the landlords obligated to provide the tenants with a rental unit that is repaired and suitable for occupation as provided under section 32 of the Act.

Considering the photographs presented to me and the oral testimony of the parties, I find the water damage significantly impacted the tenants' ability to use the entire rental unit since much of the work involved ripping up the water damaged flooring and subfloor in the majority of the rental unit. After the landlord had ripped up the flooring in the two smaller bedrooms and the tenant questioned when the new flooring would be laid the landlord's response was that the floor was still wet, followed by a statement that new flooring would not be laid until after the tenants moved out. When the tenant questioned where the children are supposed to sleep the landlord responds by saying in their bedrooms; however, the tenant had concerns the rooms were mouldy and musty smelling. I find the tenants' concerns over the livability of the rental unit to be justified.

In the circumstances described above, I find it reasonable to order the tenancy ended effective February 1, 2016, when the tenants vacated, pursuant to the authority provided to me under section 44(1)(f) of the Act which provides that a tenancy is ended when "the director orders that the tenancy is ended."

In light of the above, I award the landlords compensation equivalent to one day of rent since the tenants occupied the rental unit on February 1, 2016. The landlords are awarded $41.38 [calculated as $1,200.00 x 1/29 days in February 2016].

Utilities (hydro)

The tenancy agreement provides that the tenants are obligated to pay for hydro during their tenancy. Accordingly, I find the tenants obligated to pay for hydro consumed up to February 1, 2016, the date the tenancy ended. I estimate the tenants' obligation based upon the hydro bill

for the period of January 6, 2016 through March 4, 2016, as follows: $126.33 / 59 days x 26 days = $55.67. Therefore, I award the landlords $55.67 for hydro.

Cleaning

The landlords pointed to photographs in support of their request for five hours of cleaning. The tenants pointed to their photographs in support of their position that the unit was left reasonably clean. The landlords' photographs are taken close up and I see a dirty fridge, bathroom faucet, and toilet. The tenant's photographs are taken from further away and the unit appears clean. The problem is that I cannot determine when the photographs were taken. The condition of a rental unit is to be inspected together at the start and end of every tenancy under the Act and the landlord is to prepare an inspection report to present to the tenant at that time. These inspections and reports are intended to avoid disputes as to the condition of the rental unit. Unfortunately, these obligations were not met and I am left with opposing photographs and disputed verbal testimony.

Considering the landlords proceeded to make repairs in the weeks following the end of the tenancy, I am uncertain as to whether the faucet and toilet were used during the renovation. As such, I find the landlords failed to meet their burden to prove that the tenants left the toilet and faucet dirty. The inside of the fridge appears to be dirty from food stains and I find it unlikely the landlords were using the fridge to store food during the renovation. Therefore, I hold the tenants responsible for cleaning the fridge and I award the landlords $40.00 for cleaning it.

Damage

The damage to the rental unit was water damage from a ruptured water line. The landlords state they were uncertain as to the reason the water line ruptured. I find the tenants put forth a likely explanation that the pipes froze because the furnace malfunctioned considering there was an absence of evidence to the contrary, it was winter and the furnace was malfunctioning around that time.

It appears to me that the landlords seek to hold the tenants responsible to repair the water damage because they were denied coverage under their home owner insurance policy. However, the tenants are not obligated to know and comply with the landlord's insurance policy requirements. Rather, it is upon the landlords to understand their own insurance policy and include any applicable requirements in the tenancy agreement.

According to the tenancy agreement, the tenants were required to notify the landlords of any intended absence of seven days or more. This term is not very well worded as it does not take into account unintended absences of seven days or more. Nevertheless, the tenant did inform the landlord of their absence on December 20, 2015. The landlord received that message and made no mention of any other requirements upon the tenants. Accordingly, it is apparent to me

that the landlords were unaware of their own insurance policy requirements, yet they expect the tenants to have known and abided by it. I find that completely unreasonable.

As for carrying tenant's insurance, I find the tenancy agreement is not sufficiently clear that the tenants are required to carry it. Rather, it indicates they are responsible to pay for it. Under section 6 of the Act, if a term is not sufficiently clear then it is not enforceable. Where there is a clear term that a tenant is required to carry tenant's insurance, the landlord's remedy would be to seek orders for compliance or to evict the tenant. Further, I am unsatisfied that if the tenants had carried tenants insurance the water damage would have been covered by the tenant's insurance since the rupture was likely the result of frozen pipes and a malfunctioning furnace.

Perhaps the strongest position the landlords put forth is that the tenants did not notify them of the water leak as soon as they became aware it. I find that a reasonable person would notify the landlords of a water leak right after learning of the situation and I find that failure to do so was negligent on part of the tenants. Therefore, I accept that the tenants were negligent in their failure to notify the landlords of the water leak in a timely manner.

Despite finding the tenants were negligent in failing to notify the landlords of a water leak in a timely manner, I find I am unable to determine the value of the loss that is associated to that negligence based upon the evidence before me. I find it reasonable to expect that most of the repair work would have been necessary due to the leak itself, which the tenants are not responsible for; thus, I would hold the tenants accountable for the worsening of the damage by the delay in reporting it. It would appear that the landlords also delayed in remedying the water damage since the water damage was reported to the landlords on January 5, 2016 and the landlords did not rip up the floors until January 12, 2016. Accordingly, some worsening would attributable to the landlords' actions or lack thereof. Of further concern is that I find the amount of the loss, as supported by the landlord's "estimate" and the third party's "invoice" lacked veracity. Therefore, I find it impossible to measure the value associated to the tenants' negligence.

Where there has been a breach or negligence on part of one party, but the value of the loss associated to the breach or negligence is not measurable, a nominal award may be awarded. In this case, I recognize the tenants' negligence in reporting the water leak to the landlords in a timely manner and I award the landlords a nominal award of $100.00.

Security Deposit

The landlords continue to hold the security deposit and have sought authorization to retain it in partial satisfaction of their claims against the tenants. As mentioned earlier in this decision, I shall consider whether the security deposit should be doubled.

In this case, the landlords did not have the tenants' written authorization or authorization from an Arbitrator to retain the security deposit. Accordingly, under section 38(1) of the Act, the

landlords were required to either refund the security deposit to the tenants or file an Application for Dispute Resolution to claim against the security deposit within 15 days of the date the tenancy ended or the landlords received the tenants' forwarding address in writing, whichever date is later. Where a landlord fails to comply with section 38(1), section 38(6) provides that the landlord must pay he tenant double the security deposit.

The tenancy ended on February 1, 2016, as I have ordered previously in this decision. The forwarding address was sent to the landlords via registered mail on February 1, 2016 and received by the landlords on February 11, 2016. Section 90 of the Act deems mail to be received five days after mailing so that a party cannot avoid service; however, this deeming provision is rebuttable by evidence to the contrary. I find it unnecessary to determine whether deeming provision should apply because I am satisfied that the landlords filed their Application within time even if the deeming provision were to apply. If the deeming provision were to apply the landlords would be deemed to be in receipt of the forwarding address five days after mailing, on February 6, 2016. Fifteen days from February 6, 2016 is February 21, 2016. February 21, 2016 is a Sunday which means the landlords would be afforded the next business day to file their Application, which they did.

Although I heard the tenants also emailed their forwarding address to the landlords and posted it on social media, these methods of communication do not meet the service requirements of section 88 of the Act.

Under sections 24 and 36 of the Act, the landlords extinguished their right to claim against the security deposit for damage to the rental unit since they failed to complete condition inspection reports; however, the landlords did not lose the right to claim against the deposit for other amounts such as rent and utilities, which they did. The landlords' claims for unpaid rent and utilities had some merit and I am satisfied that these claims were not frivolous or an abuse of process.

Considering all of the above, I am satisfied the landlords complied with section 38(1) of the Act by filing an Application claiming against the security deposit within 15 days of receiving the forwarding address in writing and I make no award for doubling of the security deposit. Accordingly, the amounts awarded to the landlords with this decision are to be off-set against the single amount of the security deposit.

I authorize the landlords to deduct the following amounts from the security deposit and I order the landlords to return the balance of the security deposit to the tenants, as calculated below:

Security deposit		$600.00
Less authorized deductions:		
Rent for February 1, 2016	$41.38	
Utilities to February 1, 2016	55.67	
Cleaning	40.00	

Damage (nominal award)	100.00	237.05
Refund due to tenants		$362.95

In keeping with Residential Tenancy Policy Guideline 17: *Security Deposit and Set-Off*, I provide the tenants with a Monetary Order in the amount of $362.95 to ensure the landlords refund the balance of the security deposit as ordered.

I have made no award for recovery of the filing fee given the landlords' very limited success in this claim.

Conclusion

The landlords have been authorized to deduct $237.05 from the tenants' security deposit and have been ordered to refund the balance of the security deposit in the amount of $362.95 to the tenants. The tenants have been provided a Monetary Order in the amount of $362.95 to ensure payment is made.

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