Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF (Tenant's Application)
MND, MNDC, MNR, MNSD, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications wherein the parties each sought monetary compensation from the other and recovery of the filing fee. The Tenants also sought return of double their security deposit and the Landlord sought to retain the deposit.

The hearing was conducted by teleconference on November 8, 2016 and January 3, 2017. Both parties called into the hearings and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to monetary compensation from the Landlord?
2. Is the Landlord entitled to monetary compensation from the Tenants?
3. What should happen with the Tenants' security deposit?
4. Should either party recover the filing fee?

Background and Evidence

J.C. testified on behalf of the Tenants. He stated that the tenancy began on August 14, 2015.

Introduced in evidence was a copy of the Residential Tenancy Agreement indicating this tenancy was on a month to month basis and the rent was payable in the amount of $750.00. Pursuant to paragraph 7 of the agreement the Tenants were responsible for all utilities, including electricity, gas, water, telephone and cable television. The Tenants paid a security deposit and pet damage deposit in the amount of $750.00 pursuant to paragraph 8 of the agreement.

Also introduced in evidence was a copy of the Move in Condition Inspection report which was completed on August 15, 2015.

J.C. testified that the tenancy ended on March 31, 2016.

Introduced in evidence was a letter from the Tenants to the Landlord dated March 6, 2016 titled "notice of Breach of Material Term" wherein the Tenants confirm they are ending their tenancy effective March 30, 2016.

J.C. confirmed that the Tenants paid rent for March 2016 but did not pay rent for April 2016.

J.C. testified that they considered making an application for an Order that the Landlord make repairs and comply with the *Act,* but the Landlord refused to provide an address for service. When I asked J.C. how the Tenants paid rent he informed me that the Landlord attended at the rental unit to pick up the rent.

The Tenants sought recovery of the rent, security deposit and pet damage deposit paid at their new rental as well as their moving costs.

J.C. confirmed that the Tenants became aware that there was a problem with the heating system in early November 2015. He stated that the system would be turned on and it would immediately go to the highest setting and there was no way to regulate or turn it down; as a result the windows had to be opened to try to regulate the heat. Consequently, the Tenants incurred increase gas utility charges. The Tenants sought recovery of $10.00 per month from November 1, 2015 to the end of the tenancy at the end of March 2016 in the amount of $50.00 for their increased gas utility bills.
J.C. testified that the Landlord was informed of the heat issues by text message on November 4, 2015. He stated that in response the Landlord told the Tenants to open the vents at that time. The next message from the Tenants to the Landlord was sent on November 11, 2015 wherein the Tenants informed the Landlord that the heat would not turn off. Copies of these messages were introduced in evidence. J.C. stated that the Landlord failed to address this issue despite their verbal and written requests. J.C. confirmed the Tenants believed this to be a fundamental breach entitling them to end their tenancy early.

J.C. testified that the Tenants sought the sum of $750.00 for breach of their right to quiet enjoyment due to the noise from the upstairs tenant. Introduced in evidence were copies of text

messages from the Tenants to the Landlord regarding their concerns in this regard. The Tenants also called the police on two separate occasions due to the noise; J.C. stated that by the time the police arrived the upstairs renter had stopped playing his bass guitar and therefore the police did not take any action. J.C. confirmed that the Tenant, J.B., was working as a customer service representative and was required to be up early and as such the noise was very disruptive.

J.C. confirmed that the figure of $750.00 was derived as it represented one month's rent. J.C. stated that the last few weeks they were living there were very unpleasant as there was a considerable amount of conflict with the Landlord and the upstairs tenant such that they could not enjoy the rental unit.

The Landlord testified on her own behalf. She confirmed that the Tenants moved out March 27, 2016 and that as a result she did not receive a full month's notice. She further stated that the Tenants gave her the keys to the rental unit on April 2, 2016 such that she was not able to rent the rental unit for April 1, 2016.

The Landlord stated that although she did not complete the formal move out condition inspection report, the Tenants' advocate, J.C., and her upstairs tenant, E., and her interpreter, were present during the walk through.

The Landlord testified that she did not receive the Tenants' forwarding address in writing until she received the Tenants' Application for Dispute Resolution.

The Landlord further testified that she was not aware that the Tenants had an issue with the heat until November 2015. She confirmed that the problem was the "emergency switch" and nothing with the heat system. She further stated that she was informed there was no problem, and that the utility account for the heat was very low at that time of year. She confirmed that she is opposed to paying any amount for the increased heat as she does not believe there was an issue.

In response to the Tenants' claim regarding breach of their quiet enjoyment, the Landlord stated that the Tenants called the police twice and the police did not think there was any noise. The Landlord further stated that the Tenants should have simply called the city if they had concerns that the upstairs renter was violating a noise bylaw. She also stated that the upstairs renter has lived there for three years and did not make any noise as alleged by the Tenants.

Landlord's Claim

The Landlord testified that when the Tenants moved out of the rental unit the sum of $460.95 was owed for the Tenants' share of the utilities and penalties.

The Landlord also sought recovery of $750.00 representing unpaid rent for April 2016 based on the date of their notice to end tenancy.

The Landlord stated that the Tenants did not clean the rental unit or the yard. She claimed the sum of $3,584.50 for cleaning, cutting the grass, fixing and dumping garbage.

Introduced in evidence was a handwritten letter, at page 14, which the Landlord described as the move out condition inspection report. The Landlord stated that she did not use the proper move out condition inspection form as she "did not have the form". When I brought it to her attention that she had completed the move in inspection report on the appropriate form when the Tenants moved in, she stated that the Tenants' advocate, J.D., signed her handwritten letter and therefore accepted the contents.

The Landlord also claimed the sum of $41.29 for a "door" claiming the Tenants dog chewed the door.

The Landlord also claimed the sum of $13.47 for the cost to dispose of a mattress left by the Tenants.

The Landlord also claimed $1,500.00 for "emotional stress".

In reply to the Landlord's claims, J.D. testified as follows.

J.D. stated that the Tenants left a letter on March 27, 2015 at the Landlord's residence ending the tenancy as well as providing their forwarding address in writing. This letter was provided in evidence by the Tenants and confirms the Landlord had the Tenants forwarding address at that time.

In response to the Landlord's claim for rent for April 2016, J.D. stated that it was the Tenants' position that their notice was given based on section 45(3) based on the Landlord's breach of the material term. He stated that the house got so hot it was not livable and the Landlord did not take any steps to rectify this situation. The Landlord also failed to deal with their noise complaints regarding the upstairs renter and informed the Tenants that they would have to notify the police or city hall.

J.D. stated that the Tenants were prepared to pay the **$155.47** for the utilities as they were responsible for 2/3 of the utilities. As the Landlord claimed $148.52 for the water sewer and garbage utility, the Tenants were agreeable to paying 2/3 of this cost, or $99.01; further, the Landlord claimed the sum of $169.37 for electrical utility, as this amount covered two months the Tenants were agreeable to pay for 2/3 of ½ of that cost, or $56.46 for a total of $155.47.

J.D. confirmed that the Tenants response was that the suite was "pretty much clean" when they moved out although there were a few items that needed to be disposed and the grass needed to

be cut. J.D. confirmed that the Tenants were agreeable to paying the cost to dispose of the mattress in the amount of **$13.47.** J.D. stated that there was a mattress and large wooden mirror, which was used as a headboard, left behind; he denied that any other garbage was left behind.

The Tenants admitted that the door was damaged during the tenancy and as such they were agreeable to paying the **$41.29** claimed by the Landlord for this amount.

J.D. confirmed that he was there when the walk through occurred and signed the document drafted by the Landlord. He confirmed that he signed it to confirm he was there, not that the Tenants agreed to the contents of her handwritten notations.

J.D. stated that the Landlord allowed the Tenants to paint the suite and they agreed to pay the cost of the paint, but not labour. In support he drew my attention to Clause 4 of the Residential Tenancy Agreement which reads as follows:

> *"Landlord agreed the tenants change color of paint in the suit and tenants will pay for the paint fee when tenants move out of suit."*
>
> [Reproduced as Written]

J.D. stated that it was the Tenants understanding that the "paint fee" was the cost of the materials, not labour. J.D. further stated that the Landlord failed to provide sufficient information for the Tenants for them to understand what amount related to paint and what amount related to labour as the invoice submitted by the Landlord lacked sufficient detail.

Analysis

I will first deal with the effective date of the Tenants' notice to end tenancy as the Tenants' claim for return of their security deposit and the Landlord's claim for unpaid rent are dependent on my finding in this regard.

In their letter to the Landlord dated March 6, 2016, the Tenants submit that the Landlord breached a material term of the tenancy as it relates to her lack of response the heating issue, the noise made by the upstairs renter, the lack of hardwired smoke detectors, location of the electrical panel, and the presence of mould in the rental unit. In this letter the Tenants note that they have brought these matters to the Landlord's attention for months. The Tenants provide numerous days in mid- March for the Landlord to attend the rental unit and address these issues. Further, the Tenants request that these issues be dealt with by no later than 14 days from the date of the letter, failing which they intended to end their tenancy on March 30, 2016.

The Tenants testified that the Landlord failed to address these issues as requested. By letter dated March 27, 2016, the Tenants sent their Notice to End Tenancy alleging the Landlord failed to remedy the concerns set out in their March 6, 2016 letter within a reasonable time.

Section 45 of the *Residential Tenancy Act* deals with a tenant's notice to end tenancy and reads as follows:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

The Tenants submit they are relying on section 45(3) and that as such their notice should be effective March 30, 2016.

When the Landlord was asked what steps she took to address the Tenants' concerns regarding the upstairs renter, the Landlord responded that the Tenants should have called the municipality to make a noise complaint.

When I asked the Landlord what steps she took to address the issues raised by the Tenants with respect to the heat the Landlord stated there was no problem.

I accept the Tenants' evidence that they were unable to regulate the heat in the rental unit. I further find that a functioning heat source, including the ability to regulate that heat to be a material term of the tenancy.

I find the Tenants gave the Landlord written notice of the Landlord's failure to correct the issues with the heat source, and the Landlord failed to respond within a reasonable time.

I further find that the Tenants gave the Landlord a reasonable opportunity to address their noise complaints regarding the upstairs renter. The Landlord's response during the hearing confirms that she believed this was not a matter of her concern.

I disagree.

The Tenants have a right to quiet enjoyment of the rental unit pursuant to section 28 of the *Residential Tenancy Act* which reads as follows:

> **Protection of tenant's right to quiet enjoyment**
>
> **28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
>
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

> "…
>
> Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.
> …
> A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

In the circumstances, I find the Landlord was notified of the problem with the upstairs renter and failed to take corrective measures to deal with the Tenants' concerns regarding the noise. In failing to address this concern, I find the Landlord breached the Tenants' right to quiet enjoyment.

In all the circumstances, I find, pursuant to section 45(3), the Tenants' notice to be effective March 30, 2016.

The Tenants seek return of double the security and pet damage deposit.

Section 38 of the *Residential Tenancy Act* deals with the return of such deposits and provides as follows:

> **Return of security deposit and pet damage deposit**
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> **38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
>
> (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.
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> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.
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> (3) A landlord may retain from a security deposit or a pet damage deposit an amount that
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> (a) the director has previously ordered the tenant to pay to the landlord, and
>
> (b) at the end of the tenancy remains unpaid.
>
> (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
>
> (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
>
> (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
>
> (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report*

requirements] or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

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

There was no evidence to show that the Tenants agreed, in writing, that the Landlord could retain any portion of the security deposit.

I find that the Tenants provided the Landlord with their forwarding address on March 27, 2016 when they delivered their notice to end tenancy. As I have found the effective date of their notice to end tenancy to be March 30, 2016, I find the Landlord had 15 days from March 30, 2016 to apply for dispute resolution.

The Landlord applied for dispute resolution on June 1, 2016. Accordingly, the Landlord failed to apply for dispute resolution within 15 days and therefore breached section 38(1).

Having made the above findings, I must Order, pursuant to section 38 and 67 of the Act, that the Landlord pay the Tenants the sum of **$1,500.00**, comprised of double the security deposit and pet damage deposit (2 x $750.00).

The Tenants seek $50.00 representing their increased utility costs due to the inability to regulate the heat. I accept their evidence in this regard and award the amount claimed in the amount of **$50.00.**

The Tenants also seek compensation in the amount of $750.00 representing compensation for the Landlord's breach of their right to quiet enjoyment due to the noise from the upstairs renter. Based on the evidence before me I find the Landlord failed to take the necessary steps to address the Tenants concerns regarding the upstairs renter. I find that the Tenants are entitled to the **$750.00** claimed.

The Tenants also sought recovery of the rent, security deposit and pet damage deposit paid at their new rental as well as their moving costs; such costs are an inevitable expense as a tenant and are not recoverable under the *Act.* Accordingly, I dismiss their claim for related compensation.

I will now turn to the Landlord's claim.

The Landlord testified that when the Tenants moved out of the rental unit the sum of $460.95 was owed for the Tenants' share of the utilities and penalties.

I find that the Tenants were responsible for 2/3 of the utilities as per the tenancy agreement. The Tenants confirmed they were prepared to pay $155.47 for the outstanding utilities which they calculated as this 2/3 share of the utilities incurred during the tenancy. As the Landlord claimed $148.52 for the water sewer and garbage utility, the Tenants were agreeable to paying 2/3 of this cost, or $99.01. The Landlord also claimed the sum of $169.37 for electrical utility; however, as noted by the Tenants, this amount covered two months and included charges incurred after the tenancy ended. The Tenants noted they were agreeable to paying for 2/3 of ½ of that cost, or $56.46 for a total of $155.47. I have reviewed the invoices submitted by the Landlord and the calculations completed by the Tenants and confirm the amount owing by the Tenants for utilities as **$155.47.** The Landlord is entitled to compensation for this amount.

The Landlord stated that the Tenants did not clean the rental unit or the yard. She claimed the sum of $3,584.50 for cleaning, cutting the grass, fixing and dumping garbage.

The Landlord did not complete a Move out Condition Inspection Report, claiming she did not have access to a form. In support of her claim as to the condition of the rental unit she provided a handwritten document wherein she detailed the condition of the rental. The Tenants' advocate signed the document, to confirm they participated in the inspection, not that they agreed to the contents of the document.

As noted during the hearing, the Landlord's evidence was difficult to read due to the fact the documents were not in order, were submitted upside down in some cases, and the copies provided appeared as though she had photocopied documents on top of other documents. The handwritten document, purporting to be the move out condition inspection report, was one such document wherein the document appeared to have been copied over another document. Despite this, I was able to ascertain the following enumerated points made by the Landlord:

1. Repaint the bathroom, kitchen or living room, nor did the Tenants pay the "paint fee".
2. The suite was "dirty and dusty" and the floors and walls were not washed.
3. Garbage was left in the suite, in the storage area and the closet.
4. A bed and box-spring were left at the rental unit and broken glass on the pathway.
5. The yard was in "disarray dog poop, toys, holes dug by dogs and the grass was not cut".
6. The 2nd bedroom door and door frame was chewed up by the dogs.
7. One kitchen drawer was damaged.
8. Blinds to the bedroom were ruined and removed.
9. Living room light fixture is broken.
10. Storage room shelves removed.
11. Master bedroom floor was pulled up at the door way.
12. Picture frame hooks and small nail holes left in walls.

13. Windows left dirty.
14. Refrigerator freezer area left dirty.
15. Oven was not cleaned.

The Landlord submitted photos of the rental unit which were entirely not viewable.

The Landlord also submitted a receipt dated April 15, 2016 from B.Y. for $3,584.00 in which the following is noted: "cleaning; cutting grass; painting; fixing; dumping". The receipt provides no details as to the amount of time involved our hourly rate charged.

The Tenants disputed the amount claimed by the Landlord for cleaning of the rental unit. J.D. testified that the suite was "pretty much clean" when they moved out although she admitted there were a few items that needed to be disposed and the grass needed to be cut.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined section 37 of the *Act* as follows:

> **Leaving the rental unit at the end of a tenancy**
>
> *37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear*.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

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

The notations on the Landlord's handwritten document suggest the rental unit was not cleaned to the standard expected by section 37; however I am unable to find that it was left in such a condition that cleaning and repairs amounting to $3,584.50 was required. The invoice supplied by the Landlord lacks sufficient detail for me to determine what amount relates to painting, repairs, cleaning, etc., nor does it provide me any information as to the hourly rate charged. I accept the Landlord's evidence that some cleaning was required as well as yard maintenance; accordingly, I award the Landlord the nominal sum of **$500.00** for cleaning.

The Landlord also claimed the sum of $13.47 for the cost to dispose of a mattress left by the Tenants. J.D. confirmed that the Tenants were agreeable to paying the cost to dispose of the mattress in the amount of **$13.47.** She denied that any other garbage was left behind.

The Landlord also claimed the sum of $41.29 for a “door” claiming the Tenants dog chewed the door. The Tenants also admitted that the door was damaged during the tenancy and as such they were agreeable to paying the **$41.29** claimed by the Landlord for this amount.

The Landlord also claimed $1,500.00 for “emotional stress”. Such claims are not recoverable under the *Residential Tenancy Act* and are therefore dismissed.

In sum, I award the parties the following:

The Tenants are entitled to compensation in the amount of **$2,300.00** calculated as follows:

Double security and pet damage deposit pursuant to section 38	$1,500.00
Increased heating costs	$50.00
Compensation for breach of quiet enjoyment	$750.00
TOTAL AWARDED TO TENANTS	$2,300.00

The Landlord is entitled to compensation in the amount of **$**calculated as follows:

Outstanding utilities	$155.47
Nominal fee for cleaning, painting, repairs, and yard maintenance	$500.00
Cost to dispose of Tenants’ mattress	$13.42
Cost to replace door damaged by Tenants’ pets	$41.29
TOTAL AWARDED TO LANDLORD	$710.18

As the parties have enjoyed divided success they are to bear the cost of their own filing fees.

The total amounts awarded to each party are to be offset against the other such that the Tenants are entitled to compensation in the amount of **$1,589.82.** The Tenants are given a formal Monetary Order in the above terms and the Landlord must be served with a copy of this Order as soon as possible. Should the Landlord fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion

The Tenants are entitled to return of double their security and pet damage deposit, compensation for increased heating costs and for breach of their right to quiet enjoyment. The total awarded to the Tenants is $2,300.00.

The Tenants’ claim for compensation for costs related to their new rental is dismissed.

The Landlord is entitled to monetary compensation for outstanding utilities in the amount of $155.47, a $500.00 nominal fee for cleaning, painting repairs and yard maintenance as well as the cost to dispose of the Tenants' mattress and replace a door. The total awarded to the Landlord is $710.18.

The Landlord's claim for compensation for emotional stress is dismissed.

Neither party shall recover the filing fee.

The amounts awarded to each party are offset against the other such that the Tenants are granted a Monetary Order in the amount of **$1,589.82.**

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 27, 2017

Residential Tenancy Branch