



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNC, MNSD, FF

Introduction

This is an application brought by the Landlord requesting a monetary order in the amount of \$6389.36, requesting recovery of the \$100.00 filing fee, and requesting an order to retain the full security deposit of \$1900.00 towards the claim.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

The parties agree that this tenancy began on July 1, 2015 with a monthly rent of \$3800.00 due on the first of each month.

The parties also agree that the tenant paid a security deposit of \$1900.00 prior to the start of the tenancy.

The parties also agree that the tenancy ended on April 30, 2016 and that no moveout inspection report was done.

The parties also agree that the landlord was given a forwarding address on June 20, 2016.

The landlord testified that the tenant signed a fixed term tenancy agreement, with an end of tenancy date of June 30, 2017; however the tenant subsequently gave notice to leave the tenancy early, and vacated on April 30, 2016.

The landlord further testified that they were able to re-rent the unit; however they were not able to rent it at \$3800.00 per month but were able to rent it for \$3700.00 per month and they are therefore asking for an order that the tenants pay the difference of \$100.00 per month, until the end of the fixed term, for a total of 14 months, equaling \$1400.00.

The landlords further testified that, under the contract, the tenant was required to pay all utilities, however the tenant failed to pay the City water utility, even though a copy of the utility Bill was sent to the tenants address every three months. They are therefore requesting an order for outstanding utilities totaling \$1414.48.

The landlords further testified that the tenants were provided with the new stove at the beginning of the tenancy which had a glass surface; however at the end of the tenancy

they found that the glass surface was damaged and could not be repaired, and therefore, as a result, the stove had to be replaced, at a cost of \$1454.88.

The landlords further testified that, although the tenants did do significant cleaning before vacating the rental unit, the tenants did leave the unit in need of a small amount of further cleaning, and therefore they are requesting \$150.00 for that extra cleaning.

The landlords further testified that at the end of the tenancy they found that some of the wallpaper in the rental unit was coming off the walls, and they therefore believe the tenants should pay for the repair of that wallpaper, in the amount of \$120.00.

The landlords further testified that during the tenancy there was a leak in the rental unit that the tenants did not notice because they were using the room below the leak for storage, and as a result, it's likely that the leak continued for approximately 2 months, causing extensive damage in the room below the leak, and the cost to repair that damage is estimated to be \$1850.00.

The landlords are therefore requesting a monetary order as follows:

14 months rent loss of \$100 per month	\$1400.00
City utility bills outstanding	\$1414.48
Replace damaged stove	\$1454.88
Cleaning	\$150.00
Wallpaper repair	\$120.00
Repair damage from leak	\$1850.00
Filing fee	\$100.00
Total	\$6489.36

The landlords are further requesting an order to retain the full security deposit of \$1900.00 towards the claim, and are requesting that a monetary order be issued for the difference.

The tenant testified that although they did end the tenancy before the end of the fixed term, they were required to pay liquidated damages, in the amount of \$3800.00, which more than covers the loss of rental revenue.

The tenant further testified that he does not dispute that they were to pay the water utility bills, however they were never presented with copies of the water utility bills as claimed by the landlord, and therefore had not paid them. Once the landlord notified them that the water utility bills were outstanding they went to City Hall and paid the amount that they were told to pay at that time which was \$398.35.

The tenant further testified that they agree that they do owe for some outstanding water utilities, which were never billed to them, however they do not believe they should pay the full amount claimed by the landlords as they would have gotten a 10% discount if the bills were paid within a certain timeframe, and since the landlords did not give them copies of the bills they were unable to do so. The tenant therefore stated that they are willing to pay the total 10% discounted amount of \$1139.06, minus the \$398.35 already paid, for a difference of \$740.71.

The tenant testified that there was a new glass top stove in the rental unit at the beginning of the tenancy and that the stove worked perfectly fine at the end of the tenancy although it did have a stain on the glass top which was the result of normal daily use and not due to any negligence on their part. The tenant therefore does not believe that they should have to pay for a replacement cost of the stove, especially since it works fine.

The tenant further testified that they hired professionals to do extensive cleaning before they vacated the rental unit, and do not believe they should be paying anything further for cleaning.

The tenant further testified that the wallpaper in the rental unit was not done professionally, and it started to come off the walls on its own, and not due to any negligence or abuse on their part.

The tenant further testified that they had inform the landlord of the possibility of leaking at the beginning of the tenancy however the landlords had done nothing to ensure that leaking would not occur. The tenant further states that at no time did they notice any leaking whatsoever in the rental unit prior to moving out of the rental unit, and therefore have no way of knowing how they could possibly have informed the landlords of a leak. They do not believe therefore that they should be required to pay anything as a result of the alleged leak.

In response to the tenant's testimony the landlord testified that the tenants did pay \$3800.00 in liquidated damages to the real estate company that was working as their agent, however that was paid to the real estate company for the cost of re-renting the unit and nothing came to them, the landlords.

The landlords further testified that the City informed them that copies of the utility bills had been sent to the tenants address, however they were sent in the landlords name.

The landlord further testified that the damage to the stove is well beyond normal wear and tear and they believe it is a excessive damage for which the tenant should pay.

The landlords further testified that the moveout inspection was not done because the real estate company said it was not needed, and new tenants were waiting to move into the rental unit as soon as possible.

The landlords further testified that they believe the tenant should have taken care of the rental unit and therefore should have noticed the leak and notified them of the problem before extensive damage was done.

Analysis

It is my decision that I will not allow the landlords claim for lost rental revenue of \$100.00 per month for a 14 month period, even though the rental unit was rented for less than the amount the tenants had been paying, because the tenants have already paid liquidated damages of \$3800.00 for having breached the tenancy agreement.

The landlords have testified that there was a liquidated damages clause in the tenancy agreement however they have argued that it was paid to the real estate company and not to them, however if a liquidated damages clause is in a tenancy agreement the landlords have the right to the full amount listed as liquidated damages, however they cannot then claim further damages as a result of the breach of the tenancy agreement.

In contract law the term “liquidated damages” refers to a genuine pre-estimate of the loss that will be suffered in the event of a **breach of the contract**; it is not used to describe some subset of damage that the landlord requires the tenant to pay, in addition to general damages flowing from a breach of the contract. The landlord cannot therefore claim that the liquidated damages are only there as a subset, to cover the cost of re-renting the unit, to be genuine liquidated damages they must be considered an estimate of any losses resulting from that breach of the contract.

It is my finding that under the rental contract the tenants were required to pay the utilities, however it is also my finding that the landlords have not met the burden of proving that the tenants were ever provided copies of the water utility bills. The water utility Bill was in the landlords name and therefore I find it most likely that the water utility bills were mailed to the landlords address and not to the tenants. Further, even if the copies of the bills were mailed to the tenants address in the landlords name I accept the tenants testimony that all mail that came to his address that was addressed to the landlord was returned to the landlord.

Further, the tenant is provided evidence to show that he is already paid \$398.35 towards outstanding utilities and I therefore will only allow the \$740.71 of remaining utilities that the tenant would have paid at the discounted rate.

It is also my finding that the landlords have not shown that the tenants caused damage to the stove in the rental unit beyond normal wear and tear. It is obvious from the photo evidence provided that there are some marks on the stovetop however the landlords have provided no evidence to show that these marks of the result of any negligence on the part of the tenants. I therefore also deny the landlords claim for replacing the stove.

I also deny the landlords claim for cleaning. Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises and therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required

I also deny the landlords claim for wallpaper damage as the landlords have provided no evidence to show that this damage was not the result of normal wear and tear as claimed by the tenants.

I also deny the landlords claim for damages caused by a leak as I find there was no negligence on the part of the tenants. Even in the landlords testimony he stated that the tenants had not noticed any leak, and I therefore fail to see how the tenants could be held liable for damage from a leak, of which they were unaware.

Having denied the landlords full claim, except for the utilities agreed-upon by the tenant, I also deny the request for recovery of the \$100.00 filing fee.

Conclusion

Pursuant to sections 62(4) and 72 of the Residential Tenancy Act I have allowed \$740.71 of the landlords claim, and I therefore order that the landlord may retain \$740.71 of the tenants security deposit, and I have issued a monetary order for the landlord to return the remaining \$1159.29 of the deposit to the tenant.

The remainder of the landlords claim is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 06, 2017

Residential Tenancy Branch