



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: MND, MNSD, FF
Tenant: MNDC, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with each party seeking a monetary order.

The hearing was originally conducted via teleconference on December 20, 2016. However, as noted in my interim decision of January 3, 2017 the first hearing dealt solely with the tenant's Application for Dispute Resolution and was adjourned to the January 25, 2017 hearing date to hear the landlords' Application.

The hearing was reconvened and conducted via teleconference on January 25, 2017 and was attended by both landlords. The tenants did not attend.

The December 20, 2016 hearing was attended by both landlords; their witness; and the female tenant.

An issue of service of the landlords' Application for Dispute Resolution and hearing notification from the first hearing was dealt with in my interim decision of January 3, 2017.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid utilities; for damage to and cleaning of the rental unit; for storage fees; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for the loss of quiet enjoyment and for work completed on the property, pursuant to Sections 28, 32, 67, and 72 of the *Act*.

Background and Evidence

The landlords submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on April 30, 2015 for a 1 year fixed term tenancy beginning May 1, 2015 for a monthly rent of \$2,249.00 due on the 1st of each month with a security deposit of \$1,100.00 and a pet damage deposit of \$1,100.00 paid;
- A copy of a tenancy agreement signed by the parties on April 20, 2016 for a 4 month fixed term tenancy beginning on May 1, 2016 for a monthly rent of \$2,250.00 due on the 1st of each month with a security deposit of \$1,100.00 and a pet damage deposit paid;
- Each tenancy agreement contained a copy of a Condition Inspection Report reporting the condition of the interior of the rental unit. I note that the Report attached to the 1st tenancy agreement stipulates that it records the condition of the unit on April 30, 2015 and on April 30, 2016. I also note the Report attached to the 2nd tenancy agreement records the condition of the unit on April 20, 2016, just prior to the start of the last fixed term of the tenancy;
- The landlords have submitted several photographs and some invoices and bills in support of portions of their claims.

The tenancy ended August 31, 2016. The landlords testified that they had returned the pet damage deposit by cheque dated September 10, 2016 as there was not pet damage to the property.

The tenants seek compensation cleaning of the entire residential property, which contains to rental units in the amount of \$1,100.00; for work completed by the male tenant in the garage totalling \$2,500.00; and for loss of quiet enjoyment for the first 4 months of their residency in the property in an amount equivalent to ½ months' rent for 4 months or \$4,490.00.

The tenant testified that she helped the landlord clean the entire property at the start of their tenancy and prior to the start of a tenancy in the other rental unit after it was constructed in 2014. The tenant has provided no documentary evidence to support her claim that she did or was required to do any cleaning for either unit.

The landlords submitted an affidavit signed by the female tenant in support of the landlords in a different proceeding where the tenant states, among other things:

- Construction of the second rental unit began and was ongoing during the months of April, May, June, and July of 2014; and
- That the female tenant helped the landlord clean the basement rental unit and prepare it for the arrival of the new tenant who was to occupy it.

The landlords also submitted a copy of a document entitled "Cleaning Receipt" and dated July 30, 2014 confirming the female tenant was compensated for 7.5 hours of cleaning at a rate of \$20.00 per hour.

The tenants seek compensation for work completed in the garage by the male tenant. The parties acknowledged that the landlords had reimbursed the tenant for supplies. However, the landlords submitted that they did not ask the tenants to complete any work but rather the male tenant simply told them he was doing the work. The landlord submitted a handwritten document signed by the male tenant, the landlord and a witness agreeing that the landlord would not be compensating the tenant for the “work”

The tenants also seek compensation for the loss of quiet enjoyment for the period of time that the landlord was constructing the second rental unit, at the start of the tenancy. The tenants provided no evidence that they ever informed the landlord that they felt they were being disturbed or that they were suffering a loss of quiet enjoyment.

The landlords seek the following compensation:

Description	Amount
Unpaid Utilities	\$121.07
Irrigation cleanout and repairs	\$593.13
Pressure washing and painting	\$525.00
Venting pipe	\$100.00
Window screen replacement	\$92.00
Canada post, photocopies and photographs	\$126.19
Storage fees	\$300.00
Miscellaneous damages (valve; electrical plug installation; cut wires; dishwasher plumbing; cutting fence	\$650.00
Total	\$2,507.39

In support of their claim the landlords have submitted Condition Inspection Reports; photographs and invoices and bills.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32(1) of the *Act* requires the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

Section 32(2) states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and Section 32(3) states the tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

In the absence of any documentary evidence from the tenants in regard to the condition of the rental unit or the residential property at the start of the tenancy the only evidence of that condition is the Condition Inspection Report provided by the landlords.

That Report dated April 30, 2015 does not indicate that any cleaning of the unit or property was required. Further, the tenants have failed to provide any evidence that the second rental unit required any cleaning or that the tenant was required to clean it. Despite the tenants' failure to provide any evidence of cleaning for any reason, I accept the submission of the affidavit confirms the tenant did do some cleaning of the second rental unit.

However, I find any work that the tenant took on related to the second rental unit is unrelated to the landlords' obligations related to this tenancy. As the tenants have failed to provide evidence that their unit need cleaning and I have found any cleaning of the second unit was not related to this tenancy,

Likewise, I find that any work that the tenants took on the garage was not related to any obligations on the part of the landlords for this tenancy. I find the tenants have failed to provide any evidence that work in the garage was necessary at all.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and the use of common areas for reasonable and lawful purposes, free from significant interference.

As there is no evidence before me that the tenants ever informed the landlords that they had been disturbed by any of the construction activity, I find the tenants cannot now claim for compensation for any such disturbances. I find it would be unfair to award the tenants any compensation when the landlord was never given an opportunity to correct and minimize any disturbances.

Furthermore, I find the tenants' entire claim for losses they suffered in the first four months of living on the residential property after living there for 2 ½ years without any kind of documented proof of their claims is frivolous. Based on the above and pursuant to Section 62(4) of the *Act* I dismiss the tenants' Application for Dispute Resolution in its entirety and without leave to reapply.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of

access that are in the possession or control of the tenant and that allow access to and within the residential property.

As the tenants have failed to attend this hearing to dispute the landlords' claim I find the landlords have established the tenants failed to comply with the requirements set forth under Section 37 and that the tenants have failed to pay all outstanding utility charges during the tenancy. As a result, I find the landlord is entitled to compensation in the amounts claimed with the exception of the costs to pursue this claim, which includes: registered mail costs; photocopy costs and photographic development costs in the amount of \$126.19.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,481.20** comprised of their full claim less the costs noted above and the \$100.00 fee paid by the landlords for this application.

I order the landlords may deduct the security deposit and interest held in the amount of \$1,100.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,381.20**. This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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

Dated: January 25, 2017

Residential Tenancy Branch