



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement, for unpaid rent or utilities, and to recover the cost of the filing fee.

The landlords and the tenants attended the start of the teleconference hearing and gave affirmed testimony on February 7, 2017. The parties were given the opportunity to ask questions about the hearing process. After 60 minutes, the hearing was adjourned to allow additional time to hear further evidence from the parties. An Interim Decision dated February 9, 2017 was issued which should be read in conjunction with this decision.

On April 4, 2017, the parties reconvened and after an additional 75 minutes, the hearing concluded. A summary of the testimony and documentary evidence presented is provided below and includes only that which is relevant to the matters before me.

Neither party raised any concerns regarding the service of documentary evidence. Both parties confirmed having the opportunity to review the documentary evidence they were served with prior to the hearing.

Issue to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The parties confirmed that a written tenancy agreement did not exist between the parties and that a verbal tenancy agreement was formed which began on September 1, 2015. In a previous decision dated August 24, 2016 (the “previous decision”), the file number of which has been included on the cover page of this decision for ease of reference, an arbitrator has already dealt with the security deposit regarding this tenancy. As a result, the security deposit will not be dealt with in this decision.

The landlords have applied for a monetary claim in the amount of \$12,453.71 comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Clean up	\$630.00
2. Toilet seat X 2	\$123.18
3. Cracked light shade	\$25.16
4. Bedding	\$53.18
5. Hot tub repair	\$419.19
6. Window washing (half of the total cost of \$210.00)	\$105.00
7. Murphy bed repair	\$252.00
8. Sofa repair	\$50.00
9. Firewood	\$170.00
10. Missing silver ware	\$126.00
11. No written notice for end of tenancy (February 2016 rent)	\$2,100.00
12. No written notice for end of tenancy (March 2016 rent)	\$2,100.00
13. Loss of rent (March 2016)	\$2,100.00
14. Loss of rent (April 2016)	\$2,100.00
15. Loss of rent (May 2016)	\$2,100.00
TOTAL	\$12,453.71

Settlement Agreement

During the hearing, the parties agreed on a settlement agreement regarding some of the items being claimed by the landlords. The items which have been agreed upon by the parties have been organized into a table below for ease of reference. As a result,

the corresponding item numbers will not be included in the analysis section of this decision as all matters which form part of the settlement agreement were agreed upon by the parties on a voluntary basis, pursuant to section 63 of the *Act*, and the parties agreed during the hearing that their mutual agreements on these items form a final and binding agreement between the parties as mutually resolved matters related to this tenancy.

Settlement Agreement Item Number	Agreed upon compensation to landlords by tenant
Item 4 – Bedding	\$53.18
Item 8 – Sofa repair	\$50.00
Item 9 – Firewood	\$85.00
TOTAL	\$188.18

Evidence related to the remainder of the items

The parties confirmed that a condition inspection report was not completed in writing and in accordance with the *Residential Tenancy Regulation* (the “*Regulation*”).

Item 1

For item 1, the landlords have claimed \$630.00 for the cost of cleaning up the rental property after the tenants vacated the rental unit. The landlords referred to several photos submitted in evidence in support of the need for cleaning the rental unit and stated that the photos represent how they found the rental unit after the tenants vacated. The landlords testified that the rental unit had not been cleaned and that there were stains, dirt and human “extras”. The tenants responded by referred to a letter of reference from the landlords dated February 17, 2016 just a short period before the tenancy ended. The landlords responded by stating that while they may have provided a reference the photos still support a dirty rental unit such as “crud” in the master bathroom sink and mirrors which includes toothpaste and facial hairs etc., and that it had not been cleaned. The tenants responded by stating that the rental unit only had to be left reasonably clean and that the tenants’ position was that the rental unit was left in a reasonably clean condition. The invoice submitted by the landlord supports that the rental unit was cleaned two times for a total of 10 hours for a total of \$630.00 including tax.

The landlords referred to other photos showing dust in the bedroom and bathroom including the bathroom toilet seats which the landlords stated were so stained with urine that they required replacement as they could not be cleaned and that they were not stained with urine before the tenancy started. The tenants response to the urine stains were that they “could not recall if it was stained” before they moved in and that they claimed to have cleaned the toilets.

The tenants vehemently dispute how dirty the landlords are alleging the rental unit was at the end of the tenancy and that the landlords “never once brought up the cleaning” during the tenancy. The tenants referred to a letter submitted in evidence from their friend, C.F. The tenants stated that 1,200 minutes of cleaning time is unreasonable and that the letter of reference provided by the landlords was dated 11 days before the tenancy ended. The landlords stated that the oven was filthy, the toilet seats could not be cleaned, there was dirt and dust under the beds and that they did not expect the rental unit to be as dirty as it was once the tenants vacated the rental unit.

Item 2

Regarding item 2, the landlords are claiming \$123.18 for the cost to replace two toilet seats stained by urine. The tenants’ response during the hearing was “who’s to say they didn’t previously have stains?” The landlords presented a receipt in evidence for the full amount claimed for the cost of two toilet seats. The landlords also referred back to the photo showing a toilet seat that was urine stained.

Item 3

The landlords have claimed \$25.16 for the cost to replace one of the island pendant light shades that the landlords claim was damaged by the tenants during the tenancy. The tenants responded by stating that there was no initial walkthrough and that we never touched the lights. The tenants deny touching the pendant light. The landlords did not provide a photo in evidence of the cracked pendant light shade.

Item 4

As described above, the parties confirmed during the hearing that the tenants would pay the landlords **\$53.18** for this portion of the landlords’ claim. Furthermore, the parties agreed that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this portion of the landlords’ monetary claim.

Item 5

This item was withdrawn by the landlords during the hearing and as a result, will not be considered further in this decision.

Item 6

The landlords are claiming \$105.00 for one-half of the cost of window washing as the landlord stated that they are aware that the outside of the windows is the landlords' responsibility so they are only charging the tenants for the inside portion of the windows. The landlords submitted a receipt for \$210.00 for window washing in evidence. The landlords stated that there are 12 foot ceilings, three skylights, five sliding doors and two floor height to eight foot height windows. The landlords testified that due to the amount of grease in the kitchen that the interior windows required cleaning throughout after the tenants vacated the rental unit. The tenants' response was that there was no condition inspection report and that they cleaned "pretty much everything we could clean".

Item 7

The landlords are claiming \$252.00 for this portion of their claim which relates to what the landlords describe is a broken Murphy bed. The landlords did not supply a receipt for this item and referred to a cheque only in the amount of \$252.00. The landlords confirmed that they did not have any photos to submit but that the Murphy bed had split and that a metal strip had come apart. Tenant D.M. confirmed he saw the split on the Murphy bed and stated "I can't be certain it was me".

Item 8

As described above, the parties confirmed during the hearing that the tenants would pay the landlords **\$50.00** for this portion of the landlords' claim. Furthermore, the parties agreed that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this portion of the landlords' monetary claim.

Item 9

As described above, the parties confirmed during the hearing that the tenants would pay the landlords **\$85.00** for this portion of the landlords' claim. Furthermore, the parties agreed that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this portion of the landlords' monetary claim.

Item 10

This item was withdrawn by the landlords during the hearing and as a result, will not be considered further in this decision.

Item 11

This portion of the landlord's claim was dismissed during the hearing for two reasons. Firstly the landlords stated they realized they made a mistake by claiming for February 2016 rent as the tenants had already paid rent for February 2016. Secondly, the landlords are not entitled to rent they have already received. As a result, this item will not be discussed further in this decision.

Item 12

This portion of the landlords' claim was dismissed in full during the hearing as I find it is a duplicate of item 13, with different wording. Under the *Act*, if the landlords are seeking loss of rent, which they have claimed for in item 13, they can't also receive compensation for insufficient notice as the claim is in fact, loss of rent, not for insufficient notice under the *Act*. Therefore, I dismiss item 12 without leave to reapply.

Item 13

The landlords have claimed \$2,100.00 for loss of March 2016 rent due to the tenants failing to give proper notice to end the tenancy under the *Act*. The tenants claim that their fixed term verbal tenancy agreement was extended until March 1, 2016 which the landlords disputed and stated that no verbal agreement was made and that the tenancy was a month to month tenancy after the first four month fixed-term the parties had agreed upon and that the tenants were required to give proper notice under the *Act* to end the tenancy. The tenants referred to the reference letter provided by the landlords that indicated they were aware the tenants were vacating the rental unit. The landlords stated that while they provided a reference letter, the tenants still failed to provide proper notice to end the tenancy under the *Act*.

Items 14 and 15

These portions of the landlords' claim were dismissed during the hearing as the landlords were advised that due to the landlords moving back into the rental unit, and that the tenancy was a month to month tenancy, they were not entitled to further compensation and that the evidence presented did not justify loss of rent for April and May of 2016. As a result, items 14 and 15 were **dismissed without leave to reapply**.

Analysis

Based on the documentary evidence before me and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

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 sections 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 what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did what was reasonable to minimize the damage or losses that were incurred.

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

Item 1 - The landlords have claimed \$630.00 for the cost of cleaning up the rental property after the tenants vacated the rental unit. While the parties disputed the

cleanliness of the rental unit, I do not accept the tenants' testimony that the photos depict a "reasonable clean" rental unit. Furthermore, I afford no weight to the tenants' argument that the letter of reference supports that the rental unit was clean as section 37 of the *Act* requires that tenants leave the rental unit in a reasonably clean condition less normal wear and tear. Furthermore, I find the photo evidence supports that the tenants breached section 37 of the *Act* and I afford no weight to the tenants' letter referred to in evidence from their friend C.F. as a result. Section 37 of the *Act* states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) **When a tenant vacates a rental unit, the tenant must**

(a) **leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and**

(b) 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.

[My emphasis added]

Given the photo evidence presented, I prefer the testimony of the landlords over that of the tenants regarding this item and I find the tenants breached section 37 of the *Act* by failing to leave the rental unit in a reasonably clean condition. Therefore, I find the landlords have met the burden of proof and I grant the landlords the full amount as claimed in the amount of **\$630.00** for cleaning costs.

Item 2 - Consistent with my finding in item 1 above, I find the tenants' response during the hearing which was "who's to say they didn't previously have stains?" to be vague response to this portion of the claim and as a result, I prefer the testimony of the landlords over that of the tenants. I find the tenants didn't specifically deny they made the stains. Therefore, given the photo evidence and the receipt submitted by the landlords in the amount of \$123.18 I find the landlords have met the burden of proof for this portion of their claim and I grant the landlords the amount of **\$123.18**.

Item 3 - As the landlords failed to complete a condition inspection report and failed to submit any photo evidence for this portion of their claim, I dismiss this portion of the landlords' claim due to insufficient evidence without leave to reapply.

Item 4 - The parties mutually agreed to the amount of **\$53.18** for this portion of the landlords' claim as described above.

Item 5 - This item was withdrawn by the landlords.

Item 6 - I find the tenants' response that they cleaned "pretty much everything we could clean" to be vague again and that the tenants are required to clean the interior windows during their tenancy. Therefore, I prefer the testimony of the landlords over that of the tenants that the interior windows were not cleaned and that the landlords are entitled to **\$105.00** accordingly.

Item 7 - Consistent with my findings in items 1 and 2 above, I find the tenant D.M.'s response to be vague by testifying "I can't be certain it was me" and that I prefer the testimony of the landlords over that of the tenants as a result for this portion of the landlord's monetary claim. Therefore, even without a receipt and a cheque only in the amount of \$252.00, I am satisfied that the tenant D.M. broke the Murphy bed during the tenancy and owes the landlords for the cost of the repair as a result. Therefore, I grant the landlords the amount of **\$252.00** as claimed for this portion of the landlord's monetary claim.

Item 8 - The parties mutually agreed to the amount of **\$50.00** for this portion of the landlords' claim as described above.

Item 9 – The parties mutually agreed to the amount of **\$85.00** for this portion of the landlords' claim as described above.

Item 10 - This item was withdrawn by the landlords.

Item 11 – This portion of the landlords' claim was dismissed without leave to reapply during the hearing as described above.

Item 12 - This portion of the landlords' claim was dismissed in full as described above as it was a duplicate of item 13.

Item 13 - The landlords have claimed \$2,100.00 for loss of March 2016 rent due to the tenants failing to give proper notice to end the tenancy under the *Act*. Although the tenants claim that their fixed term verbal tenancy agreement was extended until March 1, 2016 I note that the landlords vehemently disagree that the verbal tenancy agreement was extended for another fixed term and that the tenancy agreement was a month to month agreement as a result. While I find the landlords breached section 13 of

the *Act* by failing to have a the tenancy agreement in writing, I find that where the parties disagree, the tenancy agreement is a month to month agreement and that section 45 of the *Act* applies which states:

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.**

[My emphasis added]

Given the above, I find the tenants breached section 45 of the *Act* by failing to provide the landlords with proper written notice to end the month to month tenancy. As a result, I find the tenants are required to pay March 2016 loss of rent in the amount of **\$2,100.00** as claimed by the landlords.

Item 14 and 15 – As described above, these portions of the landlords' claim were dismissed without leave to reapply during the hearing as the landlords are not entitled to further compensation and that the evidence presented did not justify loss of rent for April and May of 2016.

Regarding the recovery of the cost of the filing fee, as the landlords were only successful with a small portion of their total monetary claim, I grant the landlords half of the cost of the filing fee in the amount of **\$50.00** pursuant to section 72 of the *Act*.

Monetary Order – I find that the landlords have established a total monetary claim in the amount of **\$3,448.36** comprised of \$630.00 for item 1, \$123.18 for item 2, \$53.18 for item 4, \$105.00 for item 6, \$252.00 for item 7, \$50.00 for item 8, \$85.00 for item 9, \$2,100.00 for item 13, plus recovery of \$50.00 of the cost of the filing fee. I grant the landlords a monetary order under section 67 for the amount owing by the tenants to the landlords in the amount of **\$3,448.36**.

The landlords are cautioned to comply with section 13 of the *Act* in future which requires that all tenancy agreements be in writing.

Conclusion

The landlords' application is partially successful as described above.

The landlords have established a total monetary claim in the amount of \$3,448.36 as described above. The landlords have been granted a monetary order under section 67 in the amount of \$3,448.36. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 18, 2017

Residential Tenancy Branch