Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

The landlords apply for a monetary award for unpaid rent, utilities or loss of rental income and for damages for cleaning and repair of the premises after the tenants vacated.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

At hearing, by consent, the landlords' claim was amended to include a claim of $1152.90 for their labour spent cleaning and repairing the premises.

Issue(s) to be Decided

Does the relevant evidence presented during this hearing show on a balance of probabilities that the tenants owe rent, utilities or have caused a loss of rental income? Does it show that the tenants failed to leave the premises reasonably clean and undamaged but for reasonable wear and tear/

Background and Evidence

The rental unit is a five bedroom house. The tenancy started July 1, 2015 pursuant to written tenancy agreement for a one year fixed term ending June 30, 2016. The agreement required that the tenants vacate the premises at the end of the fixed term.

The monthly rent was $2100.00. The landlords hold a $1050.00 security deposit.

On April 26, 2016 the tenants informed the landlords by mail that they would be moving to a new location May 1. There is some evidence that the tenants texted the landlords in March about leaving the tenancy early.

The tenants were concerned that there might be mold in the home and that it was affecting the health of one of their family. The tenants do not allege that they were thus entitled to end the tenancy earlier than the end of the fixed term. They did not present evidence to prove the mold claim or medical or other expert evidence to substantiate any claim of harm from mold.

The tenants moved to another property by May 1. They left various belongings at the rental unit, thinking to reclaim them later.

The landlords had an open house for prospective tenants on May 1. They put up a “for rent” sign and placed ads for renters. They re-rented the home effective July 1, 2016.

The parties attended a move-in inspection and a report was signed in July 2015. The landlords provided the tenants with three opportunities to conduct a move-out inspection in May but the tenants did not attend any of them. The landlords completed a move-out report on May 17, 2016, the date of their last offer to inspect.

The landlord Ms. L. testifies that by May 11 the tenants still had not returned to retrieve belongings. At that time there remained: a washer and dryer, six chairs, a dining room hutch, a sofa and two upholstered chairs. The landlords put all but the washer and dryer in a truck and delivered them to the tenants’ new address. The washer and dryer remained, and are still being held by the landlords, because they would not fit in the truck.

Ms. L. testified about the cleaning she says was required, including the fireplace, chimney and pellet stove cleaning and kitchen cleaning. She reviewed and gave evidence about most of the thirty listed items in the landlords’ Monetary Order Worksheet and, as well, the landlords’ labour cleaning and repairing the premises.

The landlord Mr. C. testified about the alarm system, claiming it had been disconnected and that only one smoke detector worked, and the flooring damage in the laundry room. He says that the tenants had pulled down half the insulation in a crawlspace for some unknown reason; perhaps to run wiring. In his view the tenants had many more

occupants living there than the four children they indicated at the start of the tenancy. He says he took a full week off from work May 24 to 31, in order to work on the home.

The tenant Mr. McK. testifies that the home is an older home. He says the alarm never worked. He says the tenants cleaned adequately and produces the receipt from a professional house cleaner. He says the tenants used the pellet stove, which he cleaned, but not the fireplace.

He indicates that he helped the landlords try to find new tenants and thinks they declined to rent earlier than July 1 because they were renovating the home.

He testifies that he returned to the home May 10 to retrieve belongings and found the door locked with a new lock.

He is willing to pay reasonable utility costs for his family's actual consumption and a reasonable charge to repair damage to the kitchen ceiling where the tenants had hung a pot rack.

He left some items of furnishing at the home after May 1 and had arranged for the Salvation Army to pick them up. They failed to do so on the appointed date and the landlords delivered them to his new place, but not until July and not the washer or dryer.

He values the replacement cost of his washer and dryer with attachments at $3700.00 to $3800.00. He requested compensation for them at this hearing but was informed that to do so he will need to make his own application for dispute resolution.

Ms. L. responded generally to the tenant's testimony and noted that the locks to the home were changed by the landlords on May 17, after the tenants failed to attend the move-out inspection.

Mr. C. also responded, giving his view about the tenant Mr. McK.'s credibility and about the difficulty encountered finding new tenants with confirmed incomes appropriate to afford the rent.

Analysis

The parties have used the landlords' Monetary Order Worksheet as a template for their evidence and I will use it as a template for this analysis.

Items #1 to #5 Early Termination of the Tenancy: Rent and Utilties

I find that the tenants breached the tenancy agreement by ending it two months early. I find they have not proved justification for the breach.

The landlord's accepted the tenants' repudiation and tried to mitigate their loss by finding new tenants. The respondent tenants were aware the landlords would hold them responsible if new tenants could not be found.

A party suffering damage, the landlords in this case, is responsible to "mitigate" the loss. The burden to prove the landlords failed to mitigate is a burden on the tenants and it is not a light one (*Red Deer College* v. *Michaels and Finn* [1975] 5 W.W.R. 575 at 580 S.C.C.)

In this case I find that the tenants have not proved that the landlords failed to mitigate. The landlords used reasonable efforts to locate new tenants. Mr. McK.'s feeling that the landlords may have been too choosy about new tenants is mere speculation.

The landlords are entitled to recover the rent for May and June; rent they would have received had the tenants not breached the agreement. I award the landlords $4200.00.

In regard to water utility costs, the tenant Mr. McK. says the tenants should be responsible for the cost of actual consumption and not the "basic charge daily rate." I disagree. The City imposes a basic charge for water and then charges more if consumption goes over a specific amount. During this tenancy the tenants were responsible for that minimum usage charge, whether they used less than the minimum amount or not.

I find that the tenants owe $63.93 on the bill dated October 5, 2015, $83.79 and for the bill dated February 5, 2016.

I find the tenants are responsible for the full $210.36 charged by the bill dated May 27, 2016 covering the billing period to May 24. Had the tenants not breached the tenancy agreement this cost would have been for them and it still should be.

In result I award the landlords $358.08 for the water bills.

Items #6 and #7 Stove and Chimney Cleaning

Section 37(2) of the *Act*, sets the legal cleaning and repair standard to be met by a vacating tenant. It imposes on the tenant the duty to leave the premises reasonably clean and undamaged but for reasonable wear and tear.

Regarding fireplaces, stoves and chimneys, Residential Tenancy Policy Guideline #1, "Landlord & Tenant: Responsibility for Residential Premises" provides that the landlord is responsible for cleaning and maintaining the fireplace chimney at appropriate intervals and that the tenant is responsible for cleaning the fireplace at the end of the tenancy if he or she has used it.

The tenant Mr. McK. says they never used the fireplace, only the pellet stove and that he vacuumed out that stove before he left. Mr. C. says the tenant did not vacuum out the stove.

The evidence about the state of the fireplace and the pellet stove is equivocal. A photograph of these items before servicing or cleaning would have been of assistance.

In the circumstances of this case the landlords have failed to prove that the tenants failed to leave these facilities reasonably clean. I dismiss these items of the claim.

#8 Hydro

The tenant Mr. McK. says he should not be responsible for electrical consumption for the period May and June after the tenants vacated.

No doubt some the consumption for that period would have been the result of the landlords being in the home using lights and perhaps the baseboard heaters while they showed prospective tenants and worked at the premises and, arguably, this usage should be the responsibility of the tenants. However, it will be seen below that the tenants were not responsible for all the work the landlords performed in the home before re-renting.

In the circumstances, I award the landlords one-half the cost of electrical consumption shown in the BC Hydro bill dated July 11, 2016; an amount of $29.48.

#9 Window Cleaning

The landlords withdrew their claim for cleaning the exterior of windows. As Guideline #1 indicates, that is a landlord's responsibility.

The determination of whether or not a tenant has left a rental unit "reasonably clean" is a subjective question. Neither the *Act* nor the Guidelines gives definition to the term.

Additionally, a tenant in a rush to move to a new location and a landlord desiring to offer the rental unit in its best light to a prospective tenant, invariably disagree about what the benchmark "reasonably clean" is.

There is a move out inspection report which the landlords completed without the tenants input. A tenant who fails to attend for a move out inspection runs loses his or her right to claim recovery of a security deposit. It does not result in the condition inspection report acquiring additional evidentiary weight. It is still the responsibility of the landlord to prove the premises were not reasonably clean.

While tenants are responsible to leave the insides of windows reasonably clean, the evidence before me is divided. Lacking any objective evidence, for example, a photograph or comments in a window cleaner's invoice, and taking into account the tenants' photos, which appear to show a reasonably clean suite when they vacated, I find that the landlords have not proved that the tenants failed to leave the windows reasonably clean. I dismiss this item of the claim.

#10 Cleaning Supplies and Light Bulbs

Given the comments in #9, above, I am unable to conclude that the rental unit was not reasonably clean when the tenants vacated and so the landlords' claim for recovery of money expended for cleaning supplies cannot stand.

The landlords claim a great number of light bulbs, perhaps 20, were missing or not working. The tenant Mr. McK. says that perhaps two were missing or not working. Given the divided testimony and lacking any objective evidence that would permit me to prefer one party's version over the other, I award the landlords $15.00 for lightbulbs.

#11 and #12 Shower Handle

Ms. L. testified that the shower handle was new at the start of the tenancy and that when the landlords recovered possession it was loose. The tightening screw had been stripped. The tenant Mr. McK. testified that it may have been loose and that he had never tried to fix it.

I think it most likely that the handle became loose during regular use. It is impossible to say when the tightening screw became stripped. It may well have happened during initial installation. In all the circumstances I consider this item to be reasonable wear and tear and dismiss it.

#13 Smoke Detector Reconnect

The landlords paid an alarm company $200.56 to replace a battery, fix a doorbell alarm and splice a connection in the attic for the smoke alarm system.

The tenant says it never worked. The move in condition report notes “security system not functioning / door bell no work.”

I find that the problem with the system pre-existed this tenancy and is not the responsibility of the tenants. I dismiss this item.

#14 Broken Grate

The living room floor heating grate was bent. I think this is an item that the parties would have notices during the move-in inspection and conclude the damage occurred during this tenancy.

I award the landlords $30.46, as claimed.

#15 Paint and Primer

The tenants left large holes in the kitchen ceiling from where they had hung a pot rack. As a result, the landlords filled the holes primer painted and painted the entire kitchen ceiling.

The tenant Mr. McK. acknowledges responsibility for this damage.

I consider the landlords’ repair claim to be reasonable and award them $123.22 for the paint supplies, as claimed.

#16 Garage Door Opener

The tenants received two garage door openers when they moved in. They were either not returned or returned in bad order. The landlords' bought new ones at a cost of $134.38.

The tenant Mr. McK. was of the view that cheaper ones could have been purchases for, perhaps $20.00. Had he provided some objective evidence, like an ad or hardware store print out, his position might have had some merit. Without that evidence I am not persuaded the landlords' cost was excessive. I award them $134.38 for this item of the claim.

#17 Front Door Lock

The landlords did not receive door keys back from the tenants on May 1, 2017. On May 17 the landlords purchased a complete lockset at a cost of $189.28.

As the keys had not been returned by May 1, the landlords were entitled to secure the premises..

The tenant Mr. McK. argues that a new lockset was not required and the landlords should have simply had the locks rekeyed. He intimates that it would have cost less.

Once again, without some objective evidence, like a rekeying quote, I am unable to conclude the landlords did not take reasonable action by purchasing the lockset. I award the landlords $189.28 for this item.

#18 Front Entrance Light

As shown by the tenants' photo, this light became detached form it base and as a result hung a few centimeters lower. In my view such damage is consonant with the light being struck or bumped. The damage is reasonably observable but was not noted in the move in condition report. I consider it most likely that the damage occurred during this tenancy. It exceeds reasonable wear and tear.

I award the landlords $22.47, as claimed.

#19 Lawn Repair

The tenants or their guests were in the habit of parking on a portion of front lawn abutting the city street, separated from the street by a raised curb with no sidewalk. The photos of both parties show that the lawn was significantly damaged by vehicle tires.

It would appear likely that the area in question is part of the city roadway allowance and not technically within the boundaries of the landlords' property.

Nevertheless, the city bylaw requires that owners of property are responsible for the "landscaping" of road allowances. The public, which includes the tenants, is taken to know the city bylaws. The tenants were responsible to maintain this area as part of their obligation to maintain the grounds. It was not a proper area to park vehicles as it was part of the front lawn.

Mr. McK. considered that the landlords had not expended any time or money restoring the area and refers to "before" and "after" photographs he submitted.

I disagree. The tenants' photos satisfy me that there has been soil and seed applied to the area.

I award the landlords $60.48 for seed and soil, as per the receipt filed. The landlords filed two other receipts, one unreadable and one for what appears to be seed mix and a cultivator. Ms. L. could not recall exactly what the former was for, nor why seed was purchased twice, nor what a cultivator was for. I therefore decline to grant recover of these costs.

#21 Clean Up and Dump Fees

The landlords claim three dump fees for removal of garbage under the balcony like discarded shelving, old wood, toys and debris. The tenant Mr. McK. indicated that there was some debris already under the balcony at move in.

The move in condition report does not disclose any discarded items outside the home. It would be a normal item to record in that report. I conclude that the tenants did leave some waste or discarded material when they left and that it was appropriate for the landlords to remove it.

I award the landlords the two dump fees dated May 27 totaling $25.20. They did not explain their trip to the recycling dump on July 10, after new tenants had move in and so decline to award recovery of that expense.

#22 Bathroom Repair

As far as my notes and recollection indicate, neither landlord testified about this $39.03 item. Ms. L. left it for Mr. C. to talk about, but he did not. I therefore must dismiss this item of the claim.

#23 Laundry Room Linoleum

At some point during or after this tenancy a portion of the linoleum under the back of the tenants' washer and dryer was torn away from the concrete below. The damage is in the form of a "V" perhaps five inches in length and is consonant with one of the feet of either unit catching the linoleum and tearing it as the machine was pushed back into position against the laundry room wall.

I conclude that this damage occurred during the tenancy, though the tenants may not have noticed it as it was beneath the washer and dryer.

The landlords seek the cost of completely replacing the laundry room linoleum floor. I find this to be excessive. The damaged area is a portion of the floor dedicated for a washer and dryer. A repair, even if observable, would largely be covered by the appliances and result in no diminution of the amenity of the room.

In all the circumstances I award the landlords $250.00 for the linoleum repair.

#24 Screen Door Repair

I find that the patio screen door had been ripped during this tenancy and I award the landlords $39.20 for rescreening, as claimed.

#25 Legal Counsel

The landlords paid Landlord BC $207.00 to become members and receive advice about being landlords. Legal advice is not a recoverable expense except in the most egregious circumstances. This is not one of them. I dismiss this item of the claim.

#26, #27 and #28 "For Rent" Sign, Advertising and Credit Checks

This is an expense the landlords would have had to incur in any event even had the tenants not breached the tenancy agreement by leaving two months early. For that reason I dismiss these items of the claim.

#29 Filing Fee

I award the landlords recovery of the $100.00 filing fee for this application as it was a proper application to make.

#30 Registered Mail Costs

I dismiss this item. Costs and expenses other than the filing fee, incurred in pursuing an application, are not awardable under the *Act*.

#31 Landlord Labour (added by amendment)

The landlords did not include a claim for their own labour with their original application. It has been added by an amendment to the claim, agreed to by Mr. McK. at hearing.

I find that the landlords have performed considerable labour themselves in attending to the damage for which the tenants are responsible. The landlords have repaired and repainted the kitchen ceiling and repaired a dent in hallway wall. They have removed the tenants' discarded items by two trips to the dump. They have loaded and delivered the tenants' furnishings and have removed the washer and dryer. They have carried out the lawn repair.

In the circumstances of this case I consider $500.00 to be reasonable compensation for that work and award that amount to the landlords.

I give no consideration to the claim that insulation in the crawl space had been pulled down. The landlords did not make reference to it in their application document or Monetary Order Worksheet and so the tenants were not given a proper opportunity to respond to it.

Other

The landlords are holding or storing the tenants' washer and dryer. The tenants should have an opportunity to retrieve them. I direct that the landlords provide the tenants in advance, before April 15, 2017, with two dates and times, both before April 30, 2017 when the tenants can arrange for recovery of the two appliances. The landlords' notice must state a time between the hours of 9:00 a.m. and 5:00 p.m. on a weekday and must include the location at which the appliances can be recovered.

Conclusion

The landlords are entitled to a monetary award totalling $6127.25 plus recovery of the filing fee.

I authorize the landlords to retain the $1050.00 security deposit in reduction of the amount awarded. The landlords will have a monetary order against the tenants for the remainder of $5177.25.

Last, the rendering of this decision has been inordinately delayed and I apologize to the parties for any inconvenience incurred as a result.

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: April 02, 2017

Residential Tenancy Branch