



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNR RR DRI FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* ("the *Act*"). The landlords applied for: an Order of Possession pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants originally applied for; cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46; a monetary order for compensation under the *Act*, pursuant to section 67; a determination regarding their dispute of an rent increase by the landlords pursuant to section 43; and an order allowing the tenants to assign or sublet pursuant to section 65.

Preliminary Matters

A portion of the tenants' application was addressed at an earlier hearing. At that hearing, the parties discussed the issues between them, and ultimately achieved a resolution of part of their dispute. The landlords withdrew the application for an Order of Possession and the tenants withdrew their application with respect to an assignment or sublet of the rental unit as well as their application to cancel the landlords' 10 Day Notice. The monetary portion of the tenants' application was adjourned to this hearing date to join the landlords' monetary application.

At the previous hearing, on March 3, 2017, the tenants agreed to pay the landlords a total of \$1500.00 by March 6, 2017 (\$750.00 for February 2017 rent and \$750.00 for March 2017 rent). The landlords provided undisputed testimony that those rental amounts have not yet been paid by the tenants as of the date of this hearing. As a result of the settlement agreement on the last hearing date, the landlords were issued a monetary order for \$1500.00 as well as an Order of Possession for March 31, 2017.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent, utilities and repairs?
Are the landlords entitled to retain all or a portion of the tenants' security deposit?
Are the landlords entitled to recover the filing fee for this application from the tenants?
Are the tenants entitled to a monetary order for compensation from the landlords?

Background and Evidence

The original tenancy between Tenant MR and the landlords began on December 1, 2015 as a one year fixed term with a rental amount of \$750.00 payable on the first of each month. Tenant MR and her children moved into the rental unit at that time. The landlord submitted a copy of the original tenancy agreement for this hearing. The agreement stated that, at the end of the one year term, the tenancy may continue on a month to month basis or another fixed length of time.

Prior to December 1, 2016 (the end of the first fixed term tenancy), the landlords provided the tenants with a new month to month tenancy agreement to sign. The landlords submitted a copy of this tenancy agreement which indicated both Tenant MR and Tenant SS as tenants and a rental amount of \$1250.00 payable on the first of each month. All parties, both tenants and both landlords, signed the new tenancy agreement on December 1, 2016. The landlord confirmed that he continues to hold a \$375.00 security deposit provided by Tenant MR at the outset of the original tenancy.

As of December 1, 2016, Tenant SS moved in on a permanent basis with his children. The landlords testified that he moved in approximately September 2016 however the tenant testified that he was merely visiting throughout on occasion from September 2016 to November 2016. As of the date of this hearing, the tenants continue to reside in the rental unit. The tenants testified that they intend to vacate the rental unit on March 31, 2017.

At this hearing, the landlords sought compensation for what they claim is the balance of unpaid rent. The tenants argue that they should not have to pay this new monthly rental amount as they were forced and pressured into signing the new agreement. Tenant SS described that the tenants were forced into signing the agreement because they would have faced homelessness if they had not agreed to the new rental amount. The landlords deny forcing the tenants to sign the new tenancy agreement and provided undisputed testimony that the tenants have yet to pay the new rental amount or to pay the \$1500.00 agreed upon at the last hearing.

The landlords submitted a copy of the typewritten residential tenancy agreement signed by all parties as well as a second typewritten agreement signed by the landlords and the tenants. The second agreement addressed: rent (rent paid on or before first of each month); rent has been increased to \$1250.00 because Tenant SS moved into the rental unit; water bill to be transferred to tenants' name; tenants responsible for outstanding utilities; pets are now allowed in rental unit; a list of the 6 tenants now residing in the rental unit. Both Tenant MR and Tenant SS signed the document. The landlord also submitted a handwritten note from Tenant SS indicating that he is now residing in the unit, and will pay a further \$400.00 security deposit given the increase in the rental amount.

The landlords testified that the tenants should compensate them for mould removal and repairs to the bathtub in the rental unit. The landlord testified that the tenants requested repairs and investigation of the possibility of mold in the rental unit bathroom. The landlord testified that he provided two notices to enter the rental unit to the tenant dated January 25, 2017 and February 6, 2017. He submitted copies of these notices. The landlord testified that the tenant would not allow the landlord to enter the premises based on the notices without the landlord providing the credentials of the person entering to inspect for mold. The landlord submitted photographs of mold around the grout around the bathtub as well as in the shower door frame and the wall near the tub. The landlord submitted that the tenant exacerbated the mold situation by delaying the investigation process. The landlords also testified that they believed a fire has recently occurred within the rental unit but that they haven't been able to enter to inspect any damage.

The landlords requested compensation for the cost of rubbish removal of items on the property. The landlords submitted a city bylaw compliance notice indicating the investigation of a complaint and requesting items be cleared from the property. The landlord submitted photographic evidence of dilapidated cars, gardening items, old appliances, general garbage and building materials. Tenant SS testified that he spoke to a representative of the city and that they indicated moving the rubbish to the back of the property (backyard) was acceptable. The tenants testified that they will clean up the back of the property when they move out.

The landlord testified that the utilities were to be put in the tenants' name at the outset of the second tenancy but that the tenants failed to put the utilities in their name. The landlords submitted a demand letter sent to Tenant MR and Tenant SS on January 30, 2017 requesting payment of outstanding utilities in the amount of \$832.62. The landlord also submitted a breakdown of the outstanding utilities as well as copies of the utility bills. The tenant SS argued that the tenants should not be responsible for sewer,

garbage and recycling bills. The second tenancy agreement, in the area “what is included in the rent” indicates that only appliances, storage, carpets and parking are provided. While there are boxes to mark off for water, sewer, garbage, those boxes are not ticked off.

The landlords sought to recover the \$100.00 filing fee for their application.

The original amount sought by the landlords was \$5307.62. However that application included a request to have the tenants pay the remainder outstanding towards their new security deposit amount as well as a pet damage deposit. This portion of the landlords’ monetary application is dismissed as this tenancy is scheduled to end on March 31, 2017. After the end of the tenancy is when the security deposit is appropriately addressed. The remainder sought by the landlords is as follows,

Item	Amount
Unpaid Rent: December 2016, January 2017, February 2017 and March 2017	\$3500.00
Cost of repair work on bathtub, bathroom	1000.00
Unpaid Utilities	832.62
Less Security Deposit	-375.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Sought by LL	\$2557.62

The tenants testified that they intend to vacate the rental unit by March 31, 2017. The tenants also sought compensation totalling \$4128.00. The tenants sought \$1628.00 for snow removal work done at the request of the landlords. This portion of the tenants’ claim for compensation (regarding snow removal, work) was dismissed as it does not relate to the tenancy (is not mentioned within the tenancy agreement) but is a separate, stand-alone agreement between these parties. The remaining \$2500.00 sought by the tenants is a claim for the additional rental amount of \$500.00 per month from September 2016 through to January 2017 (5 months).

Analysis

The tenants claim that the landlords imposed an unreasonable additional rent increase and that anything paid towards that amount should be compensated. Based on the testimony provided at this hearing as well as the documentary evidence including two successive tenancy agreements, I find that the first tenancy between the landlords and Tenant MH was a fixed term tenancy scheduled to continue on a month to month basis.

Residential Tenancy Policy Guideline No. 37 addresses rent increases directly. The guideline indicates that a tenant may agree to a rent increase greater than the amount prescribed by the Residential Tenancy Branch. It is only with the tenant's written agreement that the landlord may increase rent without applying to the Residential Tenancy Branch,

The tenant's written agreement to a proposed rent increase must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars), and the tenant's agreement to that increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant.

I find that the landlord has provided clear evidence that the tenants both gave their written agreement to the rent increase as laid out in the second tenancy agreement. I find that there was no undue pressure by the landlords to exact this agreement. The tenants testified that they were afraid they would not find another residence if they did not sign the new agreement. However, this fear of eviction does not give rise to a defence to the enforcement of an existing agreement signed by all parties: it does not constitute duress.

Policy Guideline No. 37 also provides that a tenant cannot dispute a rent increase that the tenant has agreed to in writing. For the reasons provided above, I dismiss the tenant's application to find the landlord instituted an unsanctioned rent increase. I dismiss the tenant's monetary application for the reasons above, also noting that all of the evidence provided for this hearing shows that the tenants have not paid the increased rent amount since it was instituted and therefore they have no monetary loss.

Conversely, as I find the landlords did not act improperly or outside of the Act by raising the rent, I find that the tenants are now required to pay the outstanding rental amounts from the start date of the second tenancy agreement (December 1, 2016 – when it was signed by all parties). I note that both parties agreed that the tenants paid \$750.00 rent for December 2016 and January 2017. Both parties also agreed that the landlord had not been paid for February or March 2017 rent. Therefore, I find that the landlords are entitled to a monetary amount for unpaid rent of \$3500.0000. I note that this amount encapsulates all outstanding rent. The \$1500.00 monetary order issued on March 9, 2016 is still in effect and therefore, as a result of this decision, the landlord is entitled to a further \$2000.000 monetary amount.

Section 67 of the Act addresses monetary claims for damage or loss as a result of a tenancy. An arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss (the landlord, in this case) bears the burden of proof. The landlord must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage.

To support his application for a monetary claim, the landlord submitted evidence of mold within the bathroom of the rental unit. However, the landlord did not submit evidence to prove that the tenants were, through some action or failure to act, responsible for the damage. In fact, the tenants informed the landlord of the damage/potential mold. While I note that the tenant delayed the process for a brief period of time, I find that the landlord has not provided sufficient evidence that this substantially increased the scope of the damage or repair. Finally, I find that the landlord did not provide sufficient contractor quotes or receipts for labour or parts for the repair of the mold in the bathroom.

As for the removal of rubbish from the yard, the parties both testified that the tenant moved the rubbish to the backyard. The landlord provided the initial city bylaw compliance request. However, no further documents were submitted to indicate that this rubbish continued to be an issue after it was moved to the backyard. If these items belong to the tenants, the tenants will be required to move them when they vacate the rental unit.

The landlord sought to recover outstanding utilities for the rental unit in the amount of \$832.62. The landlord provided proof of the outstanding utility bills by submitting copies of the bills as well as the demand letters to the tenants requesting payment of the outstanding amounts. The second tenancy agreement, with respect to both the rental amount as well as what is included in the rent provides clear evidence of the intention of the parties signing that agreement – both tenants and landlords. Therefore, I find that the landlord is entitled to recover \$832.62 from the tenants for unpaid utilities.

Section 72 of the Act provides,

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted ...

...(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Therefore, in accordance with section 72 of the Act, I allow the landlords to retain the tenants' \$375.00 security deposit towards their monetary award.

As the landlord has been successful in their claim, I find that the landlord is entitled to recover their filing fee from the tenants.

Conclusion

I grant the landlord a monetary order as follows,

Item	Amount
Unpaid Rental Amount - December 2016: 500.00 - January 2017: 500.00 - February 2017: 1250.00 - March 2017: 1250.00	\$3500.00
Less Monetary Order of March 9, 2017	-1500.00
Unpaid Utilities	832.62
Less Security Deposit	-375.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$2557.62

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 4, 2017

Residential Tenancy Branch