



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$1500 for the failure to sufficiently clean and the removal of belongings.
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$8353
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the tenants are entitled to a monetary order and if so how much?
- e. Whether the tenants are entitled to recover the cost of the filing fee.

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on September 1, 2012. The parties agreed to subsequent fixed term tenancies with the last tenancy agreement starting on September 1, 2015 and ending on August 31, 2016. The last tenancy agreement provided that the tenant(s) would pay rent of \$2700 per month payable in advance on the first day of each month. On September 1, 2012 the tenant(s) paid a security deposit of \$1400.

The tenancy ended on August 31, 2016. The landlord sold the property with the purchaser taking possession in early September.

The rental property has three stories. The landlord retained a suite in the basement of approximately 1000 square feet. The tenants rented the two upper floors which was 2559 square feet in size. The landlord testified that the basement suite is underground on 3 out of the 4 size. The upper portion rented by the Tenants had a number windows, skylights etc.

Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. 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 residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

.Monetary Order and Cost of Filing fee

The landlord claimed \$1500 for the cost of cleaning. In support of this claim the landlord submitted an invoice and a summary of work done from the cleaning company. The summary indicates it 30 hours to clean the rental property. This included 5 hours to clean the basement suite occupied by the landlord which was in a much better state than the upper two floors. All of the bathrooms on the top 2 floors need a full bleach scrub. Furniture had to be discarded. The oven was cleaned twice. The tenant disputes this claim. He testified he cleaned the rental unit prior to vacating and he provided photos in support of this defense. He further testified that had the landlord advised him there was a problem with the cleanliness he would have hired another cleaner at a cost of \$300 to \$500. I do not accept this explanation as a reason for the failure to properly clean.

After carefully considering all of the evidence I determined the landlord has established \$500 of this claim. I reduced the amount of the claim for the following reasons:

- The landlord failed to satisfy the burden of proof that all of the work was necessary.

- The cleaner did not appear at the hearing or provide testimony in the form of an affidavit or witness statement.
- The landlord failed to provide photos of the condition of the rental unit. The tenant's photographs show that the rental unit was left in relatively good condition.
- The standard of cleanliness required by the Act is "reasonable health, cleanliness and sanitary standards." The landlord testified as the need to a deep clean. It is possible the landlord's expectation was higher than what the Act requires.

In addition I determined the landlord is entitled to the sum of \$517.47 for the cost of garbage removal. I am satisfied that the tenant failed to remove all of his belongings which forced the landlord to incur the cost of removing these belongings.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$1017.47 plus the \$100 filing fee for a total of \$1117.47.

Security Deposit

I determined the security deposit totals the sum of \$1400. I determined the landlord is entitled to retain \$1117.47 of this sum. The tenants are entitled to recover the balance in the sum of \$282.53.

Tenants' Application:

With respect to each of the Tenants claims I find as follows:

- a. I determined the tenants are entitled to the return of the balance of the security deposit in the sum of \$282.53.
- b. The rental unit included the two upper stories. The landlord retained the basement suite for their own use. The hydro was in the Tenant's name. The tenants claimed one half of the cost of the hydro for the 4 years they lived in the rental unit amounting to \$7447.28 as the hydro which they paid for was used in the basement suite. The landlord made payments of \$3 a day when the basement suite was used by the landlord or a guest of the landlord. The amount paid by landlords to the Tenants was \$974. The Tenants submit the landlord owes them the balance of their share of the hydro or \$6473.28.

The tenancy agreement indicates the tenants are responsible to pay for electricity and heat. The tenants testified the utilities for the rental unit and the downstairs' suite is on the same meter.

The landlord testified as follows:

- The parties agreed the landlord would pay the tenant \$3 a day for the period in which the downstairs suite was occupied. The tenants did not keep a

record of when the downstairs unit was occupied. However, while it is unclear, the best evidence is from the landlord which indicates it was occupied 324 days by the landlord or a person authorized to be there by the landlord.

- The tenant accepted the payments and this confirm the agreement.
- The only time the tenants started to complain about this was when they became aware the property had been sold.
- The tenant expressed concern about the power usage when the landlord's guests were not present and he was given a key to the downstairs suite by the landlord so that he could ensure the lights were out and that heat was reduced.
- The downstairs suite is approximately 1000 square feet. The upstairs suite occupied by the tenants 2559 square feet. The downstairs suite is underground for 3 of the 4 sides and this would reduce the cost to heat it. The upstairs suite has many windows and skylight thus increasing the cost of heat.
- The tenant's parents stayed in the basement suite on different occasions without being charged.

The tenants gave the following testimony:

- He did not agree to \$3 a day payment for utilities when the suite was occupied.
- He referred to a number of e-mails commencing in February 2016 demanding that he be compensated for the hydro.
- Even if there was no one in the basement, it was necessary to heat the downstairs suite to avoid freezing.
- He referred to payment of an e-mail from the DS dated August 9, 2016 which states that \$10 a night is not unreasonable now.

Policy Guideline #1 includes the following:

SHARED UTILITY SERVICE

1. A term in a tenancy agreement which requires a tenant to put the electricity, gas or other utility billing in his or her name for premises that the tenant does not occupy, is likely to be found unconscionable⁵ as defined in the Regulations.

2. If the tenancy agreement requires one of the tenants to have utilities (such as electricity, gas, water etc.) in his or her name, and if the other tenants under a different tenancy agreement do not pay their share, the tenant whose name is on the bill, or his or

her agent, may claim against the landlord for the other tenants' share of the unpaid utility bills.

I determined the tenants are entitled to compensation for the cost of the hydro they have incurred for the benefit of the downstairs suite. However, it is difficult to determine what the appropriate cost of the utilities for the downstairs suite is. The landlord failed to prove there was a contract of \$3 a day for hydro. In determining the amount of compensation I considered the following:

- The tenants paid utilities in the sum of \$14,894.56 over the 4 years of the tenancy. They are claiming half of that cost or the sum of \$7447.28. They acknowledged the landlord has paid \$974 for hydro.
- I determined that the cost of the hydro for the basement suite is not the half claimed by the tenants based on the following:
 - The basement suite has 1000 square feet. The upstairs two floors rented by the tenant is 2559 square feet in size. Thus the basement suite contains approximately 28% of the living area.
 - The basement suite is underground on 3 sides and this reduces the heating costs. The upstairs rental unit has a number of windows and skylights which would increase the energy cost.
 - The downstairs rental unit was occupied by the landlord or the landlord's guests for 324 days over the 4 year period or about 81 days a year. There is a cost of continuing the heat even when the landlord is not present but it is not as high as it would be if the downstairs suite was vacant.
 - After consider all of the evidence I determined the landlord is responsible to pay the tenants 15% of the cost of the hydro or the sum of \$2234.18. The landlord has paid the tenant \$974. The balance owed is \$1260.18.
- c. I dismissed the tenants' claim of \$480 for shared internet. The e-mail where the landlord agreed to guarantee a payment of \$10 a month related to one guest who paid the tenants directly (\$20 more than required) and is not evidence of an agreement by the landlord for the payment of wifi for the entire period 48 months. The tenants failed to prove there was an agreement with the landlord they would pay \$10 a month for the entire tenancy. The tenants failed to prove they suffered a loss by sharing the wifi information as they would have incurred this cost in any event.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$1542.71 plus the sum of \$100 in respect of the filing fee for a total of \$1642.71.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: May 29, 2017

Residential Tenancy Branch