



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR, MNDC, FF
 Tenants: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was originally conducted via teleconference on March 13, 2017 and was attended by the landlord; both tenants and their witness. The hearing was adjourned for reasons set out in my Interim Decision dated March 15, 2017 and reconvened on May 5, 2017. The reconvened hearing was attended by the landlord; his witness; both tenants and their witness.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for cleaning of and repairs to the rental unit; for unpaid utility bills; 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, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to a monetary order for return of their security deposit and for compensation for supplies for work done on the property; for storage and moving costs; for all or part of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

Both parties submitted a copy of a tenancy agreement signed by them both for a 2 year fixed term tenancy beginning on February 1, 2014 that converted to a month to month basis on February 1, 2016 for a monthly rent of \$1,750.00 due on the 1st of each month with a security deposit of \$875.00 paid. The parties agreed the tenancy ended on August 31, 2016.

The tenancy agreement included an addendum that contained 11 additional terms including the following terms relevant to the claims of these Applications:

- The oil in the oil tank will be left at the same level or higher at the end of the tenancy, or, if there is excess oil the landlord will reimburse the tenant at fair market value;
- The house and lawn/garden will be returned in the same condition as was the state when rented, if not, the following charges will apply. Lawn and garden maintenance will be billed out at \$45.00/ forty-five dollars an hour. Household cleaning will be billed out at \$30.00/ thirty dollars an hour plus cleaning supplies. Normal wear and tear are to be expected, abuse is not;
- The carpets are to be professionally cleaned at the end of the tenancy, a copy of the invoice for the work done by the cleaners is to be provided to the landlord;
- Picture hanging is to be in moderation, excessive wall damage due to picture hanging will be repaired by a professional painter at the expense of the tenant at the end of the tenancy at the rate of \$45.00/ forty-five dollars an hour, or cheaper, IF the work is satisfactory, professional painters ONLY;
- Water and electricity bills will be the responsibility of the tenant; and
- The floors, walls, bathrooms and kitchen will be kept in a clean and presentable manner to prevent deterioration.

At the outset of the hearing the parties agreed the tenants owe the landlord the following amounts for utilities: heating oil in the amount of \$198.53; water utility in the amount of \$269.61 and final water utility bill in the amount of \$33.61 for a total of \$501.75 for all utilities. The tenants also agreed to pay 1 dump fee of \$25.00.

The landlord seeks additional compensation for the following items:

Description	Amount
General Cleaning: 16 hours at \$30.00 per hour, plus GST	\$480.00
Carpet Cleaning: (as per average)	\$246.75
Paint Repairs: 3 hours at \$45.00 per hour, plus GST	\$173.25
Yard Work: 8 hours at \$45.00 per hour, plus one dump fee of \$25.00, plus GST for a total of \$531.56 – less amount agreed to by tenants in their submission	\$506.56
Copying; DVD copying, postages, taxes in	\$44.31
Total	\$1,450.87

In support of his claim the landlord has submitted the following relevant evidence:

- A copy of a Condition Inspection Report recording the condition, as agreed by both parties, prior to the start of the tenancy completed on January 9, 2014 and signed by the tenant as disagreeing with the report at the end of the tenancy on August 29, 2016. I note the landlord has indicated in response to every item

recorded “no” with the exception of the basement crawl space; patio deck, balcony, porch; and storage areas, lockers;

- 2 CD’s with recordings of a move in condition inspection with the landlord and the male tenant recorded on January 9, 2014 and a recording of the move out condition inspection without only the landlord (neither tenant was in the recording). At the start of the second recording the landlord states the date was August 30, 2016, showing in part the compost bin full. However, at the 8 minute 30 second mark the landlord indicates that it was August 29, 2016 and shows all of the contents removed from the compost bin stating that the landscapers are on their lunch break;
- Copies of several emails between the parties over the issues of this claim;
- A copy of an email from the landlord’s cleaner who stated: “While some areas of the house were better than others, overall an additional 16 hours were needed on my behalf to finish so the residence would be ready for new tenants”;
- Copies of the following receipts, invoices, and/or estimates:
 - A video store in the amount of \$16.88;
 - An invoice dated September 16, 2016 from the cleaner who had sent the email above for 16 hours of general cleaning at \$30.00 per hour for general cleaning;
 - An invoice dated October 28, 2016 (9:00 to 9:30) for carpet cleaning in the total amount of \$246.75 with a handwritten notation that it was paid by Visa;
 - An invoice dated November 10, 2016 for interior painting touch ups in the total amount of \$173.25;
 - An undated invoice for “fall clean up – rental property October 2016” with an indication the work was completed on October 11 and 12, 2016 in the total amount of \$531.56; and
 - An invoice from the tenant’s carpet cleaner dated August 10, 2016 in the total amount of \$84.00.

The landlord’s witness provided general information regarding his practices as an experienced landlord in relation to the use written lists provided to tenants to identify cleaning needs at the end of a tenancy. The witness had no direction knowledge of the condition of the rental unit at either the start or the end of the tenancy.

The parties acknowledge that an inspection was completed earlier in the month of August and that it did not go well. The parties agree that at the time of that inspection the tenants had moved out of the rental unit and the landlord had identified some deficiencies in cleaning. The tenants submitted that they came back the following day and completed an additional ½ hour of cleaning.

The tenants seek the following compensation:

Description	Amount
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Trim trimming dump charges 3 at \$33.60 each	\$100.80
Top soil	\$200.00
Priority post charges for a previous dispute proceeding	\$12.55
Time off work to look for new residence – female tenant: 3 hours at \$27.00 per hour	\$90.00
Time off work to look for new residence – male tenant: 5 hours at \$55.00 per hour	\$275.00
Gas for house search	\$50.00
Storage rental – June 21, 2016 to August 31 2016	\$469.05
Moving Company – August 3, 2016	\$761.27
Cost to transfer hydro account	\$13.02
Cost for new gas utility account	\$25.00
Gas utility security deposit	\$210.00
Return of August 2016 rent	\$1,800.00
Total	\$4,006.69

In response to the landlord's claim and in support of their claim the tenants submitted the following relevant evidence:

- A written submission dated January 27, 2017 signed by both tenants that includes the tenants' explanation of why they ended the tenancy. They state that the landlord had issued a notice to end tenancy on June 8, 2016 and that they applied to dispute the notice but were not scheduled for a hearing until July 25, 2016. They further stated: "Due to the hearing date being only 6 days prior to the eviction date, and with the uncertainty for our family's living situation and schooling (2 kids), we were forced to look for a new residence right away for August 1, 2016. The tenants noted that on July 28, 2016 they gave the landlord their notice to end tenancy;
- A copy of a previous decision cancelling the 1 Month Notice to End Tenancy for Cause issued by the landlord on June 8, 2016;
- A USB stick with a copy of the landlord's end of tenancy video; three videos recorded by the tenants' witness (with no audio) and several still photographs from the end of the tenancy; and
- Copies of the following receipts, invoices, and/or estimates:
 - Canada Post receipt dated June 20, 2016 in the amount of \$12,.55;
 - List of receipts for showing payments for storage in the amount of \$135.15 on June 21, 2016; \$166.95 on July 4, 2016; and \$166.95 on August 3, 2016;
 - 3 distinct receipts for recycling deliveries dated July 6, 2017;
 - Receipt dated August 3 (no year given) for moving costs in the total amount of \$761.27;
 - Receipt dated August 10, 2017 for carpet cleaning in the amount of \$84.00;
 - Hydro bill dated September 7, 2016 showing a set up charge of \$13.02;

- Gas utility bill dated October 6, 2016 confirming an application fee of \$25.00

Analysis

I accept, as noted above, the tenants agree they owe the landlord for the utility charges totaling \$501.75 and for \$25.00 of the landlord's claim for dump fees. As I result, find the landlord is entitled to \$526.75 of his claim.

In relation to the landlord's claim for compensation for the costs of "dvd copying, postage and taxes in" totaling \$44.31 I note that *Act* does not provide authourity to recover the costs of pursuing a claim through this process other than the recovery of the filing fee. I dismiss this portion of the landlord's claim.

Likewise, in relation to the tenants' claim for \$12.55 for mail charges for a different proceeding, I find the *Act* does not provide authourity to recover costs to pursue a claim other than for the recovery of the filing fee.

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 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.

I regard to the landlord's claim for carpet cleaning, I accept the tenancy agreement required the carpets to be professionally cleaned at the end of the tenancy with a copy of the invoice for the work done by the cleaners to be provided to the landlord. From the evidence of both parties, I find the tenants provided the landlord with an invoice for carpet cleaning in the amount of \$84.00. As such, I find the tenants have established they had the carpets cleaned.

Despite the landlord's assertion that the tenants did not have all of the carpeting cleaned in the rental unit I find he has provided no evidence to confirm that any of the carpet had not been cleaned. I also find that while he has submitted an invoice/receipt showing that he paid \$246.75, the landlord has failed to provide any evidence that the amount the tenants paid (\$80.00) is indicative of them failing to have all carpeting cleaned.

As a result, I find the landlord has failed to establish that he was required to have the carpets cleaned and I dismiss this portion of his claim.

Section 6(3) of the *Act* stipulates that a term in a tenancy agreement is not enforceable if the term is inconsistent with the *Act* or regulation; the term is unconscionable; or the term is not expressed in a manner that clearly communicates the rights and obligations under it.

In the case before me, I find that the term in the tenancy agreement addendum that requires the “house and lawn/garden will be returned in the same condition as was the state when rented” is inconsistent with the expectations of Section 37 of the *Act*, requiring the tenant to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

I find that it is also, in general terms, unrealistic to expect that a lawn and garden be “in the same condition” 2 years or longer after a tenancy begins. In addition, I find this also applies to the times of year that the tenancy began and ended. In this case, the tenancy began in February and ended in August.

As such, I find this clause is not enforceable and as a result, I find the tenants are only obligated to meet the requirements set forth in Section 37 of the *Act*.

I also note the landlord’s submission of the statement from his cleaner that indicates the unit required additional cleaning “so the residence would be ready for new tenants” is not the standard the tenants are obligated to achieve at the end of the tenancy, pursuant to Section 37.

I also find the Condition Inspection Report, when view in conjunction with both the landlord’s video evidence and the tenants’ video and photographic evidence, provides absolutely no value to the determination of the condition of the rental unit.

First, the Report provides a legend of various codes to be used to describe the condition of the interior of the rental unit such as C = needs cleaning; D = damaged and so on, however, the landlord has written “No” in most boxes. As such, it is not clear if the landlord refers to cleaning, damage, need for painting, missing, and normal wear and tear or stained, when he wrote “No” in the boxes on the Report.

Secondly, if the landlord is indicating issues related to cleaning and damage or painting it appears he is stating that **ALL** of the walls, ceilings, floors, carpets, linoleum, blinds, curtains, drapes, cabinets, counters, closets, cupboards, light fixtures, light bulbs, electronic & electronic connections were either not cleaned or were damaged.

While I accept that the landlord may have wished to clean the interior of the rental unit more for his incoming tenants, I find the video evidence of both parties confirms that, for the most part, the rental unit was left reasonably clean and undamaged.

Even if additional cleaning was required, I find there is no evidence to support that the interior required 16 hours of additional cleaning. I find that the letter from the cleaner identified specifically that the cleaning was required for the new tenant and provided no indication of how these tenants left the unit.

As such, I find the landlord has failed to establish that the tenants failed to comply with their obligations under Section 37 of the *Act*, in relation to the landlord's claim for cleaning the interior of the rental unit and painting. Despite this finding the tenants testified, in the hearing, they would pay the landlord \$30.00 for forgetting to dust off a baseboard after a wall repair had been made. Therefore, I dismiss the bulk of the landlord's claim for cleaning and painting but grant the landlord \$30.00 by the tenant's agreement.

In relation to the condition of the yard on the residential property at the end of the tenancy, I find the video evidence of the landlord confirms that the yard was left to the standard required by Section 37, which is reasonably cleaned, with the exception of what was left in the compost bin and the need for the landlord to remove a small garden bed the tenant's installed..

As noted above, the tenants had agreed that they would pay the landlord for dump fees for the compost bin in the amount of \$25.00.

I also note that despite the landlord's testimony explaining the yard maintenance process, the invoice he has submitted to confirm his costs specifically identifies the work for "fall clean up" and that the work occurred almost a month and a half after the tenancy ended. I note this invoice does not indicate anywhere that it included any work to remove a garden bed.

Based on this I dismiss the landlord's claim for yard work with the exception of the already noted \$25.00 agreed to by the tenants.

In regard to the tenants' claim for the cost of 3 dump fees for the removal of branches that resulted from pruning on the property, the tenants have provided no evidence that they requested the landlord to remove the branches or that there was a need to remove any at all. As such, I dismiss this portion of the tenants' claim.

Likewise, I find the tenants have provided no evidence that they had requested that the landlord install a garden bed or provide any additional soil or the garden or that there was a need for additional soil. Therefore, I dismiss this portion of the tenants' claims.

As the remainder of the tenants' Application relates to the costs associated with moving from the rental unit, except for their request for return of the security deposit, the following reasons apply to the tenants' claims for compensation for: lost wages; gas money; storage rental; moving company; transfer fees for hydro; new account set up and security deposit for gas utility; and the return of August 2016 rent.

Section 44(1) of the *Act* states a tenancy ends only if one or more of the following applies:

- a) The tenant or landlord gives a notice to end the tenancy in accordance with one of the following:
 - i. Section 45 (tenant's notice);
 - ii. Section 46 (landlord's notice: non-payment of rent);
 - iii. Section 47 (landlord's notice: cause);
 - iv. Section 48 (landlord's notice: end of employment);
 - v. Section 49 (landlord's notice: landlord's use of property);
 - vi. Section 49.1 (landlord's notice: tenant ceases to qualify);
 - vii. Section 50 (tenant may end tenancy early);
- b) The tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- c) The landlord and tenant agree in writing to end the tenancy;
- d) The tenant vacates or abandons the rental unit;
- e) The tenancy agreement is frustrated; or
- f) The director orders the tenancy is ended.

Despite the tenants' submissions regarding the circumstances that led to them moving out of the rental unit, based on their Notice to End Tenancy, I find the tenants have provided no evidence that the landlord has breached the *Act*, regulation or tenancy agreement or that the actions of the landlord caused the tenants to suffer the losses claimed.

A landlord is entitled to attempt to end a tenancy for reasons allowed under Section 47 of the *Act*. In the circumstances between these two parties the landlord had determined that he felt he had the right to end the tenancy because of significant damage to his property. As such, I find he was allowed under the *Act* to issue a 1 Month Notice to End Tenancy.

Likewise, I find the tenants had the right to either accept the end of the tenancy was to be August 31, 2017 and move out or file an Application for Dispute Resolution seeking to have the Notice cancelled. The tenants choose to file an Application seeking to have it cancelled.

I also find that the tenants were uncomfortable with the timing of the hearing being so close to the effective date of the Notice and they decided to look for new accommodation. As result, the tenants found new accommodation and issued their own notice to the landlord to end the tenancy pursuant to Section 45 of the *Act*.

Based on the above, I find the tenants incurred all of the costs claimed by their own choice. While I understand the timing would have been of concern it does not provide evidence of any violation of the *Act*, regulation or tenancy agreement on the part of the landlord.

Despite the arbitrator's finding that the cause identified on the 1 Month Notice was not sufficient to end the tenancy, again there is no evidence that the issuance of it violated any section of the *Act*, regulation, or tenancy agreement.

As a result, I find the tenants have failed to establish any grounds for compensation related to moving from the rental unit. I dismiss this portion of the tenants' Application for Dispute Resolution.

Conclusion

As both parties were substantially unsuccessful in their claims, I dismiss both of the claims to recover their filing fees from each other.

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$556.75** comprised of \$198.53 heating oil; \$303.22 water; \$25.00 dump fees; and \$30.00 cleaning. I order the landlord may deduct this amount from the security deposit held in the amount of \$875.00 in satisfaction of this claim.

I grant a monetary order to the tenants in the amount of **\$318.25** for return of the balance of the security deposit. This order must be served on the landlord. If the landlord fails to comply with this order the tenants 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: June 02, 2017

Residential Tenancy Branch