



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNDC OLC
For the landlords: MND MNR MNDC FF

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “*Act*”). The tenants applied for a monetary order in the amount of \$5,000.00 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for an order directing the landlords to comply with the *Act*. The landlords applied for a monetary order in the amount of \$5,214.99 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, to recover the cost of the filing fee and for other unspecified relief.

The landlord M.M. (the “landlord”), two agents for the landlords (the “agents”) and the tenants attended the teleconference hearing which began on May 18, 2017. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. After 67 minutes, the hearing was adjourned to allow additional time to hear the evidence of the parties. On May 19, 2017 an Interim Decision was issued which should be read in conjunction with this decision. On July 11, 2017, the parties reconvened and after an additional 54 minutes the hearing concluded.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither party raised any concerns regarding the service of documentary evidence.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- Have the tenants provided sufficient evidence that the landlords should be directed to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on November 15, 2015. The tenancy agreement reverted to a month to month tenancy after November 30, 2016. The tenants paid a security deposit and pet damage deposit which the parties agreed has already been returned in full.

Landlords' claim

The landlords have claimed a total amount of \$5,214.99 but reduced the amount to \$2,380.37 through the submission of an updated monetary order worksheet as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Water/sewage and garbage invoices	\$288.89
2. Hydro/gas part 1	\$385.42
3. Hydro gas part 2	\$62.83
4. Rent Oct 1-2	\$131.51
5. Canstar invoice	\$792.41
6. Plumbing invoice	\$553.93
7. WPM contracting	\$165.38
TOTAL	\$2,380.37

Settlement Agreement

During the hearing, the parties mutually agreed to resolve items 1, 2, 3 by way of a mutually settled agreement pursuant to section 63 of the *Act* as follows:

Item numbers & description	Amount the tenants agree to compensate the landlords
1. Water/sewage and garbage invoices	\$260.01
2. Hydro/gas part 1 and 3. Hydro gas part 2	\$279.25 (comprised of the following amounts combined: \$11.17, \$9.61, \$11.66, \$183.98, 62.83)
TOTAL	\$539.26

Regarding item 4, the landlords have claimed \$131.51 for the tenants over-holding the rental unit for October 1st and 2nd of 2016 when the undisputed 2 Month Notice to End Tenancy for Landlord's Use of Property dated August 4, 2016 (the "2 Month Notice") had an effective vacancy date of November 30, 2016. There is no dispute that the tenants did not return possession of the rental unit until October 2, 2016. The tenants' response to this portion of the landlords' monetary claim was that they were forced to do extra cleaning at the rental unit by the landlords even there was no move-in condition inspection report

and that they don't feel they are responsible as a result. The agents stated that while the landlords' son occupied the rental unit and did not pay rent, the landlords had to compensate their agents to attend at the rental unit beyond November 30, 2017.

Regarding items 5, 6 and 7, the landlords have claimed \$792.41 for item 5, \$553.93 for item 6 and \$165.38 for item 7 which are all related to a water leak concern reported to the landlords by the tenants. The \$792.41 amount relates to a restoration company invoice that the landlords claim was based on the tenants causing water damage themselves in the rental unit. The invoice submitted by the landlords dated July 29, 2016 reads in part:

"...attended to perform emergency services for this Water loss. The source of the loss was due to a Blocked perimeter drain.

Our invoice for emergency services as outlines in the scope of work as follows..."

[Reproduced as written]

The landlords claim that it was only until later that the restoration company changed their determination of the water source as an internal source.

I note that in a document dated July 21, 2016, submitted in evidence by the landlords which is before the date of the above-noted cause, the restoration company writes in part:

"...This water appears to have originated inside the room itself".

The tenants denied that they spilled any water and that water was bubbling up from the laminate flooring which is why they contacted the landlords as soon as possible to advise of the water leaking into the unit. The landlords submitted two other invoices for the amounts described above, namely \$553.93 for item 6 and \$165.38 for item 7.

Tenants' claim

Regarding the tenants' claim, the tenants have claimed a total amount of \$5,000.00 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Double the monthly \$2,000.00 rent due to the landlords allegedly failing to use the rental unit in accordance with the reason stated in the 2 Month Notice.	\$4,000.00
2. Emergency moving costs	\$500.00
3. Material filing costs	\$500.00
TOTAL	\$5,000.00

Regarding item 1, the tenants referred to several colour photos and two short videos that the tenants claim supports that the landlords were renting the rental unit to someone other than the landlords' son. The landlord vehemently disagreed and stated that their son was occupying the rental unit and that he

would have guests come from time to time and family relatives but that neither their son or the landlords re-rented the rental unit and that their son was occupying the rental unit as indicated on the 2 Month Notice.

Regarding items 2 and 3, both items were dismissed during the hearing as the tenants are not entitled to moving costs as they did not dispute the 2 Month Notice and accepted both the 2 Month Notice and one free month of rent for September as \$2,000.00 compensation for the landlords serving the tenants with a 2 Month Notice. In addition, the tenants were advised that there is no remedy for costs associated with preparing for a dispute resolution hearing under the *Act*.

Analysis

Based on the documentary evidence and the oral 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 each applicant 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 respondent. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicant 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.

Landlords' claim

Items 1, 2 and 3 – As described above, the parties voluntarily agreed to a mutually settled agreement on items 1, 2 and 3 during the hearing in the total combined amount of **\$539.26** owing by the tenants to the landlords. This settlement agreement was reached in accordance with section 63 of the *Act*. The parties confirmed their understanding and agreement that this mutually settled agreement was made on a voluntary basis and that the parties understood the final and binding nature of their settlement agreement and that it was enforceable.

Item 4 - Regarding item 4, the landlords have claimed \$131.51 for the tenants over-holding the rental unit for October 1st and 2nd of 2016. I have taken the \$2,000.00 monthly rent and have divided the number of

days in October which is 31 and have reached a per diem rent amount of \$64.52 per day. Therefore, \$64.52 multiplied by two equals \$129.04. I find the landlords have met the burden of proof as the tenants were required to vacate the rental unit by November 30, 2016 at 1:00 p.m. which they failed to do. As a result, I award the landlords **\$129.04** and not the \$131.51 as claimed for the tenants over-holding the rental unit until October 2, 2016.

Items 5, 6 and 7 - I find the invoices submitted by the landlords contradict their testimony and that the landlords have failed to meet the burden of proof as a result for all three items. In reaching this finding I have considered that the July 29, 2016 invoice which clearly indicates that the source of the water "was due to a Blocked perimeter drain." As a result, I afford no weight to the document dated earlier than July 29, 2016 as that reason was before the later document created on July 29, 2016. Therefore, I find the cause of the water was due to the perimeter drain blockage as supported by the invoice dated July 29, 2016 and which I also find is consistent with the type of water bubbling described by the female tenant who called the landlord to report the water leak. I find the landlords' claim that the tenants spilled water to be unreasonable and highly unlikely.

As the landlords' claim had merit, I grant the landlords the recovery of the filing fee in the amount of **\$100.00**.

Given the above, I find the landlords have established a total monetary claim of **\$768.30** comprised of \$539.26 for items 1, 2 and 3 which were resolved by way of a mutually settled agreement, \$129.04 for item 4, and \$100.00 for the recovery of the cost of the filing fee.

Tenants' claim

Item 1 – I have carefully considered the evidence submitted by the tenants and find that they do not support that the landlords re-rented the rental unit and more likely than not, the people in the rental unit were guests, family members or relatives of the landlords. At the very least, I would have expected the tenants to produce a rental ad, rental sign, witnesses or a signed witness statement from at least one of the people the tenants suspected of being new tenants in the unit, none of which the tenants submitted in evidence. Therefore, I dismiss this portion of the tenants claim due to insufficient evidence, without leave to reapply.

Items 2 and 3 – As described above, both of these items were dismissed during the hearing as I find the tenants are not entitled to moving costs as they did not dispute the 2 Month Notice. In addition, I find that costs related to the preparation of a dispute resolution matter are not costs recoverable under the *Act*. Therefore, I dismiss items 2 and 3 due to insufficient evidence, without leave to reapply.

Given the above, I grant the landlords' a monetary order pursuant to section 67 and 72 of the *Act* in the amount of **768.30** which is owed by the tenants to the landlords.

The tenants' application is unsuccessful.

Conclusion

The landlords' application was partially successful.

The tenants' application is unsuccessful.

The landlords are granted a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenants to the landlords in the amount of \$768.30. 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: July 14, 2017

Residential Tenancy Branch