



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of 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.

Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlords' application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the tenants were duly served with the landlords' Application. Both parties confirmed receipt of each other's evidentiary materials, which were duly served in accordance with section 88 of the *Act*.

Issues to be Decided

Are the landlords entitled to a monetary award for unpaid rent, damage and losses arising out of this tenancy?

Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began in July of 2014. Monthly rent was \$900.00 for duplex, which was built in 1976. The landlords collected, and still currently hold, a security deposit in the amount of \$450.00. The landlords believe the tenants abandoned the rental unit, ending the tenancy on or about December 26, 2016. The tenants dispute this, stating that the tenancy ended on December 31, 2016. The tenants provided a forwarding address in December 2016.

Both parties agreed that the tenants had given notice for this tenancy to end on December 31, 2016. The landlords testified that they were notified by neighbours that the tenants had abandoned the rental unit. Concerned, the landlord went to investigate and found the doors unlocked and open, and heat turned off. The landlords testified that they decided to change the locks on December 29, 2016 as they considered the unit abandoned as the tenants never returned the keys, and the unit seemed vacant with the exception of the tenants' garbage in the garage.

The landlords are seeking a Monetary Order in the amount of \$4,249.40 as outlined in the table below:

Item	Amount
Cost of Changing Locks	\$94.50
Ceiling Fan Replacement	425.00
Painting & Mould Repair	780.15
Blind Replacement	478.80
Carpet & Underlay	1,605.00
Washing Machine Parts	87.90
Total Monetary Order Requested	\$4,249.00

The landlords provided invoices for the lock change and painting, and estimates for the cost of replacing the ceiling fan, blinds, carpet and underlay, as well as a new washing machine door. No move in or move inspection reports were completed or submitted in evidence for this tenancy. The landlords requested recovery of the filing fee for this application, as well as to retain the tenants' security deposit in partial satisfaction of the monetary claim.

The tenants dispute the landlords' testimony that they had moved out, or abandoned the unit, stating that they had started the move-out, but did not expect to vacate the rental unit until the last day of the tenancy, December 31, 2016. As the locks were changed without their permission, the tenants testified that they were not able to properly complete the move, including cleaning the unit and removing all of their belongings. The tenants dispute the testimony of the landlords stating that they made frequent trips to and from the rental unit to remove their items, and that all doors were locked and not left open as the landlords stated in their testimony. In preparation of the move the tenants had contacted the utilities company to discontinue the hydro on December 27, 2016. The tenants dispute the monetary claim stating that the landlords changed the locks without their permission, restricting their access to the suite.

Analysis

Section 31 of the *Act* states as follows:

Prohibitions on changes to locks and other access

31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

By changing the locks on December 29, 2017 without the tenants' permission, and before this tenancy ended on December 31, 2017, I find the landlords failed to comply with sections 31 of the *Act*.

Section 37(2) of the *Act* states that "when a tenant vacates a rental unit, the tenant must a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and b) 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". By changing the locks without permission of the tenants, or an Order to do so, I find that the landlords impeded the ability of the tenants to fulfill their obligations of section 37 of the *Act*. On this basis, I dismiss the landlords' entire monetary claim.

I also note that the landlords had failed to comply with sections 23 and 35 of the *Act* which requires the landlords to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. The consequence of not abiding by these sections of the *Act* is that “the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished”, as noted in sections 24(2) and 36(2) of the *Act*. I dismiss the landlords’ application to retain the tenants’ security deposit. I order that the landlords return \$450.00 to the tenants.

I dismiss the landlords’ application to recover the filing fee for this application.

Conclusion

The landlords’ entire application is dismissed.

I order the landlords return to the tenants their security deposit in the amount of \$450.00. I issue a Monetary Order in the tenants’ favour in the amount of \$450.00. The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: August 4, 2017

Residential Tenancy Branch