



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: MNR MNR MNSD FF

For the tenants: MNDC MNSD FF

Introduction

This hearing dealt with cross-applications for Dispute Resolution by both parties under the *Residential Tenancy Act* (the “Act”). The landlords have requested a monetary order for damages to the unit, site or property, for unpaid rent or utilities, for authorization to retain all or part of the security deposit and/or pet damage deposit, and to recover the cost of the filing fee. The tenants have requested a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of their security deposit and/or pet damage deposit plus penalty, and to recover the cost of the filing fee.

On June 16, 2017 the hearing commenced and after 33 minutes into the hearing, it was clear that an adjournment was necessary due to service issues related to the landlord’s documentary evidence which was not numbered and to which the tenants claimed they were not served with. An Interim Decision dated June 16, 2017 was issued which should be read in conjunction with this decision. On August 22, 2017, the hearing was reconvened and the parties confirmed that they had received documented evidence from the other party and had the chance to review that evidence prior to the hearing. Neither party raised any concerns at the start of the reconvened hearing regarding the documentary evidence they had been served with. As a result, the hearing continued.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants’ security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 1, 2016 and was scheduled to revert to a month to month tenancy after

April 30, 2017. The parties confirmed that the tenants did not vacate the rental unit until December 3, 2016. Monthly rent during the tenancy was due on the third day of each month as stated in the tenancy agreement.

Regarding an incoming condition inspection report, the tenants testified that the landlord did not complete an incoming inspection report at the start of the tenancy which the landlords confirmed and then later changed their testimony. The landlords later claimed that they had written “unit in new condition” on the incoming condition inspection report (the “incoming CIR”) which is not supported by the copy of the incoming CIR which does not show the version that the landlord submitted in evidence.

Landlords’ claim

The landlords have claimed a total amount of \$8,397.75 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Window sill repair	\$2,199.75
2. Unit cleaning	\$120.00
3. Shower drain repair	\$210.00
4. Bylaw violation	\$100.00
5. Bylaw violation	\$50.00
6. Kitchen counter top repair	\$4,068.00
7. December 2016 loss of rent	\$1,650.00
TOTAL	\$8,397.75

Regarding item 1, the landlords submitted an invoice in the amount of \$2,199.75 for material and labour and referred to several colour photos submitted in evidence. I have closely examined the photos submitted in evidence and note that there are no before photos submitted to support that the window sills were in new condition at the start of the tenancy. The landlords claim that the tenants had a lack of heat in the rental unit which caused condensation in the rental unit which the tenants vehemently denied by pointing out that they had children and always had the rental unit heated. The tenants also testified that the landlord failed to complete an incoming condition inspection report as required under the *Act*. The tenants also stated that if the landlords built window sills of a low quality that the tenants were not responsible for the landlords’ choice to build low quality window sills and that the tenants were not negligent in any way. The tenants also affirmed that the landlords did not write that there was mould in the outgoing condition inspection report.

During the hearing, it became apparent that the landlords failed to comply with my Interim Decision order to reserve their evidence and the landlords decided instead to only serve certain evidence and not their full evidence. As a result, the landlords were advised that any evidence such as the countertop photos which were not served on the tenants would be excluded in full due to the fact that I find the landlords did not sufficiently serve the tenants as ordered in my Interim Decision.

Regarding item 2, the landlords have claimed \$120.00 for unit cleaning and submitted a receipt in evidence. After reviewing the photos submitted by the landlords, I advised the parties that I was satisfied the tenants failed to comply with section 37 of the *Act* by leaving the rental unit in reasonably clean condition at the end of the tenancy. In reaching this decision I note that the photo evidence supports that the tenants did not reasonably clean the rental unit before vacating. I will grant the landlords \$120.00 for cleaning costs later in this decision.

Regarding item 3, the landlords have claimed \$210.00 to repair a shower drain. The landlords allege that there was a hair blockage in the shower drain and submitted an invoice for \$210.00 in support of this portion of their monetary claim. The tenants testified that hair in a shower drain can be expected and should be a part of regular drain cleaning maintenance by the landlord and that this is not neglect or damage on the part of the tenants and that it is reasonable for hair to be found in a shower drain.

Regarding items 4 and 5, the landlords have claimed \$100.00 for item 4 and \$50.00 for item 5 respectively for fines levied against the tenants via the landlord for violation of the strata rules. The landlords indicate in the tenancy agreement which was signed by the tenants that the tenants agreed to in #37 of the tenancy agreement that reads as follows:

“37. The tenant is also responsible for all fines associate with contravention of strata bylaws that occurs during the tenancy period.”

[Reproduced as written]

The landlords submitted three letters in evidence to support the fines as claimed and also included a letter from the strata council indicating that the tenants' appeals for both fines were dismissed and that the fines were confirmed as owing. As a result and taking into account the letters submitted in evidence, I am satisfied that the tenants are responsible for both fines which total \$150.00 and I will grant the landlords that amount later in this decision.

Regarding item 6, the landlords failed to submit the photos for this portion of their claim and as a result, I will deal with this item and my finding regarding the incoming condition inspection report later in this decision.

Regarding item 7, the landlords have claimed \$1,650.00 for loss of December 2016 rent. The landlords originally testified that rent was due on December 1, 2016 and then later changed their testimony when the landlords were advised that the tenancy agreement indicated that monthly rent was due on the 3rd day of each month. The landlords claim that they were unable to re-rent the rental unit due to the condition the tenants left the rental unit in at the end of the tenancy. The parties agreed that the tenants were served with a 1 Month Notice to End Tenancy for Cause dated October 7, 2017 (the "1 Month Notice") with an effective vacancy date of November 15, 2017. I find that the earliest date in which the tenancy could end would have been December 2, 2016 as the landlords did not issue a notice until after October rent was due on October 3, 2016 and that pursuant to section 53 of the *Act* the 1 Month Notice would automatically correct to December 2, 2016 accordingly.

Tenants' claim

Regarding the tenants' claim, the tenants have claimed a total amount of \$1,850.00 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Return of security deposit	\$825.00
2. Penalty for double security deposit	\$825.00
3. Return of moving deposit of \$200.00	\$200.00
TOTAL	\$1,850.00

Regarding item 1, I will offset any amount owed to the landlords from the tenants' security deposit of \$825.00 later in this decision.

Regarding item 2, this item was dismissed during the hearing as the landlords applied for dispute resolution on December 16, 2016 which I find is within the 15 day timeline as indicated in section 38 of the *Act* after the parties confirmed that the tenants' written forwarding address had been provided on the December 3, 2016 outgoing condition inspection report.

Regarding item 3, this item was also dismissed as the strata council has already retained the tenants' moving deposit to offset an addition fine of \$200.00 which was

supported in letter dated December 21, 2016 submitted in evidence due to the tenants continuing their move after they said it was complete.

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 applicants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the applicants 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

Firstly, I must deal with the issue of credibility. I do not find the landlords to be credible as they changed their testimony during the hearing and did not comply with my order in the Interim Decision. One such example is when the landlords admitted they did not complete an incoming condition inspection report which is supported by the copy of the incoming CIR submitted in evidence by the tenants and then later claimed they had written "unit in new condition" at the start of the tenancy which is not indicated on the tenants' copy of the incoming CIR. As a result, I find the landlords altered their copy of

the incoming CIR after the tenancy which results in the CIR being granted no weight in support of the landlords' claim. Another example is that the landlords did not comply with my order to reserve their evidence and made what I find to be an unreasonable decision to only serve a portion of their evidence on the tenants prior to the reconvened hearing.

Regarding item 1, although the landlords submitted an invoice in the amount of \$2,199.75 for material and labour and referred to several colour photos submitted in evidence, I have closely examined the photos submitted in evidence and I am not satisfied that the tenants caused damage to the window sills during the tenancy. In reaching this decision I note that there was no incoming CIR completed by the landlords and that the landlords failed to provide before photos of the window sills. As a result, I find the landlords have failed to meet the burden of proof and **I dismiss** this portion of the landlords' claim in full, without leave to reapply.

Regarding item 2, the landlords have claimed \$120.00 for unit cleaning and submitted a receipt in evidence. Having reviewed the photos submitted by the landlords, I advised the parties that I was satisfied the tenants failed to comply with section 37 of the *Act* by leaving the rental unit in reasonably clean condition at the end of the tenancy. In reaching this decision I note that the photo evidence supports that the tenants did not reasonably clean the rental unit before vacating. Based on the above, I find the landlords have met the burden of proof and I grant the landlord **\$120.00** as claimed for this portion of their monetary claim.

Regarding item 3, the landlords have claimed \$210.00 to repair a shower drain. The landlords allege that there a hair blockage in the shower drain and submitted an invoice for \$210.00 in support of this portion of their monetary claim. The tenants testified that hair in a shower drain can be expected, is from normal use of a shower and should be a part of regular drain cleaning maintenance by the landlord and that this is not neglect or damage on the part of the tenants. I agree with the tenant that hair in a shower drain is not neglect or misuse and as a result I find the landlord has failed to prove part one of the test for damages or loss. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence without leave to reapply.

Regarding items 4 and 5, the landlords have claimed \$100.00 for item 4 and \$50.00 for item 5 respectively for fines levied against the tenants via the landlord for violation of the strata rules. As indicated above, I am satisfied that the landlords have provided sufficient evidence and have met the burden of proof and that the tenants owe the landlord **\$150.00** as claimed for items 4 and 5.

Regarding item 6, I **dismiss** this item due to insufficient evidence as I find the landlords provided no before and after photos as the landlords' photos were not served on the tenants as ordered and have been excluded in full as a result. I also note that the incoming CIR was not completed and that the landlords have failed to meet the burden of proof as a result. This item is dismissed without leave to reapply.

Regarding item 7, the landlords have claimed \$1,650.00 for loss of December 2016 rent. As the parties agreed that the tenants were served with a 1 Month Notice to End Tenancy for Cause dated October 7, 2017 (the "1 Month Notice") with an effective vacancy date of November 15, 2017. I find that the earliest date in which the tenancy could end would have been December 2, 2016 as the landlords did not issue a notice until after October rent was due on October 3, 2016 and that pursuant to section 53 of the *Act* the 1 Month Notice would automatically correct to December 2, 2016 accordingly. As the tenants occupied for one extra day, I find the tenants are responsible for the per diem rent amount of **\$53.23** as December has 31 days and the daily per diem amount for rent would equal \$53.23 per day. As I have dismissed the window sill and countertop portions of the landlords' claim, I find the landlords have provided insufficient evidence that they could not re-rent the rental unit for December 2016. Therefore, I dismiss the remainder of this portion of their claim accordingly without leave to reapply due to insufficient evidence.

As the landlords' claim only was partially successful, I grant the landlords half of the recovery of the cost of the \$100.00 filing fee in the amount of **\$50.00**.

Given the above, I find the landlords have established a total monetary claim of **\$375.23** comprised of \$120.00 for item 2, \$150.00 for items 3 and 4, \$55.23 for item 7 and \$50.00 for the recovery of half of the cost of the filing fee.

I **caution** the landlord to comply with section 23 of the *Act* in the future by completing a condition inspection report as required by the *Act* and regulation.

Tenants' claim

Firstly, items 2 and 3 have already been dismissed as the landlords filed their application on time pursuant to section 38 of the *Act* and I the tenants' moving deposit has already been retained by the strata council due to the tenants continuing their move after they said their move was complete. Therefore, I will only deal with item 1 now which is their security deposit of \$825.00.

I do not grant the tenants the recovery of the cost of their filing fee as items 2 and 3 did not have merit and the balance of the tenants' security deposit would have been ordered to be returned without the tenants having to apply for dispute resolution.

As the landlords have proven a total monetary claim of \$375.23 I deduct that amount from the tenants' security deposit of \$825.00 and I find the landlords must immediately return the tenants' security deposit balance of **\$449.77**.

Should the landlords fail to immediately pay the tenants \$449.77 as ordered above, I grant the tenants a monetary order pursuant to section 67 and 72 of the *Act* in the amount of **\$449.77** which is owed by the landlords to the tenants.

I caution the tenants to comply with section 37 of the *Act* which requires tenants to leave a rental unit reasonably clean at the end of the tenancy.

Conclusion

The landlords have established a total monetary claim of \$375.23 which is deducted from the tenants' \$825.00 security deposit which has accrued no interest to date. The landlords have been ordered to immediately return the tenants' remaining security deposit balance of \$449.77.

The tenants are granted a monetary order pursuant to section 67 of the *Act*, for the amount owing by the landlords to the tenants in the amount of \$449.77. Should the tenants require enforcement of the monetary order the tenants must first serve the landlords and then the monetary order 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: August 28, 2017

Residential Tenancy Branch