



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF
 MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord and amended application made by the tenants. The landlord has applied for a monetary order for unpaid rent or utilities; a monetary order for damage to the unit, site or property; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for return of the security deposit or pet damage deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord.

The landlord and both tenants attended the hearing and the tenants were assisted by an Articled Student. The landlord and one of the tenants gave affirmed testimony, and the parties were given the opportunity to question each other and give submissions. The parties agreed that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord, the tenants and I were all cut off the conference call hearing at separate times. No testimony or submissions were heard from any party while the other was not in attendance.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for over consumption of utilities?

- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Have the tenants established a monetary claim as against the landlord for return of all or part of the security deposit?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically double the amount of the security deposit?

Background and Evidence

The landlord testified that this fixed term tenancy started on October 20, 2016 and expired on April 19, 2017 at which time the tenants were required to vacate the rental unit. A copy of the tenancy agreement has been provided for this hearing which names both tenants, is signed by both tenants and the landlord, and specifies a rental amount of \$1,500.00 per month payable on the 20th day of each month. However the landlord testified that the advertisement was for rent of \$1,750.00 and the landlord agreed to \$1,500.00 per month because the male tenant was only to be there for 2 weeks and some weekends. The male tenant remained for the entire tenancy and the landlord claims \$625.00, being 2 ½ months of unpaid rent at \$250.00 per month, the difference between the \$1,750.00 and \$1,500.00.

At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an executive 1 bedroom furnished suite in the landlord's basement, and the landlord resides in the upper level of the home.

The tenancy agreement has a 1-page Addendum, entitled "Lease Agreement," from which the landlord pointed out 2 terms: the tenants acknowledge:

- To be financially responsible for damage willfully or accidentally caused by themselves or guests. Cost to repair any damage will be the sole responsibility of the tenants; and
- That they will vacate the property in the clean and same condition in which it was found otherwise \$40/hour will be charged for cleaning required to restore the suite to the original clean state.

A move-in condition inspection report was completed at the beginning of the tenancy and a copy has been provided for this hearing. At the time of move-out the parties agreed to a time on April 19, 2017 for the move-out condition inspection. The tenant

contacted the landlord when she was ready for the inspection, but the landlord explained that she wasn't available and would contact the tenant once the landlord completed the move-out condition inspection report, which was done on April 19, 2017 in the absence of the tenants. The landlord also took photographs at that time and copies were provided for this hearing. The tenant didn't ask for a second opportunity to participate in the inspection and never offered to return to finish cleaning. The landlord needed access into the suite, and the tenant said she was moving onto the mountain that day, so there was no arrangement to return.

The tenancy agreement provides that hydro is included in the rent, however the tenants are clothing optional people and kept the thermostat very high and the landlord felt she was taken advantage of. Heat rises, and the temperature was uncomfortable for the landlord, who asked the tenants to keep the thermostat at 72 or 74 degrees. The hydro bills were excessively high and the landlord has provided hydro bills for the duration of the tenancy and the previous year for comparison purposes, and claims the difference between the 2 years.

The landlord further testified that at the end of the tenancy the carpet and furniture were permeated with smells of food, and the landlord claims \$102.90 for carpet cleaning. A copy of an invoice has been provided.

The landlord also claims \$30.77 for a pane of glass that had been on top of a side table to prevent damage, which was missing at the end of the tenancy. Also, 2 cutting boards were completely destroyed at the end of the tenancy. The landlord has had them for about 5 or 6 years, and claims \$27.98 for their replacement.

The landlord also testified that the vacuum was making strange noises after the tenancy ended and the landlord took it for repair. The disposable bag burst inside the chamber, and the landlord claims \$76.16 for cleaning it out. It was about 3 or 4 years old, and the landlord put a clean bag in it and provides bags to the tenant. It had not been previously serviced but wouldn't need servicing unless a bag broke.

The landlord also claims \$160.00 for doing 7 loads of laundry, which took the landlord 4 hours to complete. All bedding and linens were spotless at the beginning of the tenancy, and the Addendum to the tenancy agreement specifies that the laundry was to be completed or a charge of \$40.00 per hour would be charged. The tenant told the landlord that the laundry room door was locked, but did not call the landlord about it to have it unlocked.

The landlord's Monetary Order Worksheet claims:

- \$102.90 for bedroom, living room and hall carpet cleaning;
- \$30.77 for replacing the glass table top;
- \$27.98 to replace 2 cutting boards;
- \$76.16 for servicing the vacuum cleaner;
- \$625.00 for an additional occupant for 2 ½ months;
- \$160.00 for 7 loads of laundry (4 hours @ \$40.00 per hour);
- \$160.00 for cleaning the suite (4 hours @ \$40.00 per hour);
- \$121.54 difference of excessive consumption of electricity;
- \$188.27 difference of excessive consumption of electricity;
- \$162.83 difference of excessive consumption of electricity;
- \$44.94 difference of excessive consumption of electricity;
- \$70.93 difference of excessive consumption of electricity;
- \$74.71 difference of excessive consumption of electricity;
- \$87.60 difference of excessive consumption of electricity.

The landlord's total claim is \$1,933.63, plus recovery of the \$100.00 filing fee.

The landlord sent a text message to the tenant asking for a forwarding address and the tenant responded with the forwarding address on April 29, 2017. The landlord sent a letter to the tenant to that address explaining the deficiencies left by the tenant, and testified that the Landlord Application for Dispute Resolution and evidence for this hearing were sent to that address.

The tenant testified that the landlord never mentioned excess electricity use during the tenancy, and it was the coldest winter on record.

The landlord arranged the move-out condition inspection for 11:00 a.m., and the parties did so. The tenant does not believe the landlord had the report with her to complete at that time. The only things pointed out by the landlord were a boot tray and laundry. The tenant cleaned the boot tray with a rag and the landlord said not to worry about the laundry. The landlord told the tenant that the landlord had 10 days to look through the apartment and would get back to the tenant about the security deposit.

The landlord had also told the tenant probably about a month before the end of the tenancy that she was ripping up the carpets and installing hard-wood floors, and an interior designer was there. The landlord also used the same vacuum cleaner.

The tenant denies that the glass on the table top was existent at the beginning of the tenancy – it wasn't there.

Analysis

Firstly, with respect to the landlord's claim for unpaid rent, the tenancy agreement is clear that there are 2 tenants and the rent is set at \$1,500.00 per month. There is nothing restricting how much time either tenant actually resides there, and I dismiss that \$625.00 claim.

With respect to the landlord's claim for excess electricity use, although hydro is included in the rent I am satisfied that the tenants kept the heat at about 10 degrees or more warmer than the landlord expected, and the tenant confirmed that in her testimony. I have reviewed the hydro and gas bills provided by the landlord and note that the Basic Customer Charge in electricity was lower in 2016 than in 2017, which I do not believe is affected by the consumption. The Meter Reading Information shows a consistent increase in consumption from 2016 to 2017, but I have no evidence before me to establish that in 2016 the rental unit was occupied, and I deny the landlord's claim for utilities.

In a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

A tenant is required to leave a rental unit at the end of a tenancy reasonably clean and undamaged except for normal wear and tear. Anything beyond normal wear and tear is the responsibility of the tenant. I accept that the tenants agreed to a fee of \$40.00 per hour for cleaning not done by the tenants. The *Act* states that the inspection reports are evidence of the condition of the rental unit, however I find that the landlord did not complete the move-out condition inspection report with the tenants in the manner described by the regulations by failing to provide the tenants with at least 2 opportunities to participate. Therefore, I cannot rely on the move-out portion. The tenant testified that the parties did an inspection and the only things noted by the landlord at that time were the boot trays, which the tenant cleaned with a rag, and laundry. The tenant also testified that the landlord said not to worry about the laundry, but I am not satisfied that the landlord waived the \$40.00 per hour fee, and I find that the landlord has established the claim of \$160.00 for laundry.

I accept the undisputed testimony of the landlord that the photographs depict a before and after condition with respect to cleaning, and I accept the landlord's claim of \$160.00.

A tenant is expected to have carpets cleaned if the tenant resides in the rental unit for a year or more or if the tenant has pets not kept in a cage. In this case, the tenancy was only for the winter from October to April, and the tenants have no pets. Therefore, I dismiss the landlord's application for carpet cleaning costs.

The tenant denied that any glass top existed on the side table, and in the absence of any proof thereof, it boils down to 1 person's word over another and the claim has not been established.

I find that the cutting boards had outlived their useful lives and I dismiss the landlord's \$27.98 claim.

The landlord and the tenant used the vacuum cleaner, and I can only assume that the landlord used it for cleaning other suites as well as the common areas. It is not known when the bag broke or who was responsible. I find that the landlord has failed to establish that the damage occurred as a result of the tenant's failure to comply with the *Act*, and I dismiss that claim.

In summary, I find that the landlord has established a claim of \$160.00 for cleaning and \$160.00 for laundry, and the balance of the landlord's claim is dismissed.

A landlord is required to return a security deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application for dispute resolution claiming against it within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. The tenants claim double the amount. The tenancy ended on April 19, 2017 and the landlord filed the Landlord Application for Dispute Resolution on August 18, 2017. The parties agree that the landlord received the tenant's forwarding address via text message on April 29, 2017 and the landlord has provided a copy of a letter written to the tenant at that address on the same day. The landlord also testified that the Landlord Application for Dispute Resolution was served on the tenants at that address, and therefore I am satisfied that the landlord received the tenants' forwarding address in writing on April 29, 2017. I find that to be more than 15 days from either the date the tenancy ended or the date the landlord received the tenants' address, and therefore, the tenants are entitled to double the amount, or \$1,500.00.

Since both parties have been partially successful with the applications I decline to order that either party recover the filing fees.

Having found that the landlord has established a claim of \$320.00 and the tenants have established a claim of \$1,500.00, I set off the amounts, and I grant a monetary order in favour of the tenants for the difference in the amount of \$1,180.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,180.00.

This order is final and binding and may be enforced.

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: November 03, 2017

Residential Tenancy Branch