



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

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

- a monetary order for unpaid rent and utilities, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 114 minutes in order to allow both parties to fully present their submissions. I note that the landlord spoke for most of the hearing time.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's application.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and utilities, for damage to the rental unit and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 3, 2016 for a fixed term to end on June 30, 2017, after which the tenants were required to move out. The tenants vacated the rental unit on May 15, 2017. Monthly rent of \$1,450.00 was payable from September to November 2016, \$1,350.00 was payable from December 2016 to May 2017 and \$1,050.00 was payable for June 2017. All monthly rent payments were due on the first day of each month. A security deposit of \$675.00 was paid by the tenants and the landlord continues to retain this deposit in full. Both parties signed a written tenancy agreement and a copy was provided for this hearing.

Both parties agreed that move-in and move-out condition inspection reports were completed for this tenancy. The landlord said that she did not have written permission to keep any amount from the tenants' security deposit. The tenants said that they initially agreed that the landlord could keep their security deposit for utility bills and cleaning but did not sign for this on the move-out condition inspection report because the landlord asked for additional monies for these and other items. The landlord acknowledged that she received the tenants' written forwarding address on May 15, 2017. The landlord filed this application to retain the tenants' security deposit on May 24, 2017.

The landlord seeks a monetary order for \$2,091.43 plus the \$100.00 application fee.

The landlord seeks \$280.82 in gas utilities, \$355.14 in hydro utilities and \$27.97 to replace a missing twin mattress cover. The tenants agreed to pay these amounts to the landlord during the hearing.

The landlord seeks \$162.50 for an extra ferry trip that she said she had to take in order to complete the move-out condition inspection and report with the tenants. The landlord provided receipts for this cost. The tenants claimed that they advised the landlord that they could not complete the inspection as planned on April 30, 2017, and the landlord insisted on coming anyway. The tenants claimed that they had a medical hospitalization emergency on April 28, 2017 so they were unable to meet as originally planned on April 29, 2017 so it was rescheduled for April 30, 2017, but they were still

unable to finish cleaning the rental unit because of the medical issue. The tenants maintained that the landlord sent text messages to them on April 30, 2017 indicating that she would only complete the move-out condition inspection if the tenants paid the utilities and loss of rent owing, which the tenants said they were unable to pay at that time. The landlord agreed that she expected the tenants to pay the above costs and claimed that the tenants agreed to meet with her and then backed out when she had already taken the ferry.

The landlord seeks \$1,000.00 for a loss of rent. The landlord seeks \$675.00 for half of May rent and \$325.00 for a portion of June 2017 rent, because she said the tenants breached the parties' fixed term tenancy agreement by moving out on May 15, 2017. She said that the tenants only paid her \$675.00 for half of May rent and nothing for June rent. She explained that she was able to re-rent the unit for \$725.00 from June 13 to 17, 2017, so she was seeking the balance of \$325.00 from what was owed for the reduced rent of \$1,050.00 for June 2017. She stated that she made best efforts to re-rent as per the advertisements provided with her application.

The tenants claimed that they only paid for half of May rent of \$675.00 because the landlord offered to settle the entire loss of rent issue for that amount. They pointed to the landlord's offer in her text message to the tenants on April 30, 2017. The landlord agreed that the tenants paid \$675.00 to her for a loss of rent but then claimed that because the rental unit was so dirty on the move-out condition inspection, she decided to revoke her offer by way of this application. The tenants said that they were not given any notice of revocation of the \$675.00 offer until they received the landlord's application claiming for an increased loss of rent of \$1,000.00, since they paid the amount thinking they were settling the issue.

The landlord seeks \$105.00 for lawn cutting at the rental property. The landlord provided photographs of the lawn after the tenants moved out, stating that they failed to cut it. Both parties agreed that the tenants were required to cut the lawn in their tenancy agreement. The tenants claimed that they cut the lawn on April 26, 2017, as per their agreement with the landlord's husband, which the landlord confirmed. They said that they made this agreement so they could transport their lawnmower to their new unit without having to bring it back again to cut the lawn again. But the landlord maintained that because the parties rescheduled their move-out condition inspection from April 29 to May 15, the tenants should have cut the lawn again.

The landlord seeks \$80.00 for cleaning the rental unit. The landlord said that the tenants failed to clean properly. The landlord provided photographs of the rental unit.

The tenants claimed that they sufficiently cleaned the rental unit for six hours before vacating and the landlord took the photographs while she was illegally staying in the rental unit on April 30, 2017, without the tenants' permission and prior to them vacating. The landlord agreed that she stayed in the rental unit on April 30, 2017 without the tenants' permission, but that she took the photographs on May 15, 2017, right after the move-out condition inspection.

The landlord seeks \$80.00 to replace a broken corner of a screen door at the rental unit. The landlord provided photographs of this claim. The tenants claimed that it was reasonable wear and tear and that a wind storm blew the corner of the screen door off, which they glued back on so it was functional.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I award the landlord the full amounts claimed of \$280.82 (\$96.38 + \$100.64 + \$83.80) in gas utilities, \$355.14 in hydro utilities and \$27.97 to replace a missing twin mattress cover. The tenants agreed to pay these amounts to the landlord during the hearing.

I dismiss the landlord's claim for \$162.50 without leave to reapply, for an extra ferry trip that she said she had to take in order to complete the move-out condition inspection and report with the tenants. I find that the tenants advised the landlord that they could

not complete the inspection as planned on April 30, 2017, and the landlord insisted on coming anyway. I find that the landlord's own text messages to the tenants on April 30, 2017, which the landlord provided for this hearing, show that the landlord would only complete the move-out condition inspection if the tenants paid the utilities and loss of rent owing, which the tenants said they were unable to pay at that time. I find that the cost of travel, because the landlord lives a ferry ride away from the rental unit, is the cost of doing business as a landlord who chooses to rent a unit that is away from home and if multiple trips are involved, those are at the landlord's cost.

I dismiss the landlord's claim for a loss of rent of \$1,000.00 without leave to reapply. The tenants claimed that they only paid for half of May rent of \$675.00 because the landlord offered to settle the entire loss of rent issue for that amount. I agree. I find that both parties agreed to settle the loss of rent issue for \$675.00, as per the landlord's offer in her text message to the tenants on April 30, 2017. I find that the landlord settled the issue prior to the hearing. I further find that the tenants already paid this amount to the landlord before the hearing, as agreed by both parties in their testimony.

I dismiss the landlord's claim for lawn cutting of \$105.00 without leave to reapply. I find that the landlord failed part 3 of the above test by failing to provide a receipt or invoice for this claim. She said that she had an invoice but did not send it to the RTB because it would cost money to do so by registered mail. When I told the landlord that it did not have to be sent to the Residential Tenancy Branch by registered mail, it can be sent by regular mail, fax or dropped off in-person, she said that she did not know that. The landlord only provided an email, which I find is insufficient.

I dismiss the landlord's claim for cleaning of the rental unit for \$80.00 without leave to reapply. I find that the landlord failed part 3 of the above test by failing to provide a receipt or invoice for this claim. The landlord provided a copy of an email only, which I find is insufficient.

I dismiss the landlord's claim to replace a broken corner of a screen door for \$80.00 without leave to reapply. I find that the landlord failed part 3 of the above test by failing to provide a receipt or invoice for this claim. The landlord provided a copy of an email only, which I find is insufficient. The email indicates that it would cost \$25.00 to \$35.00 each for this claim but the landlord estimated herself that it would cost \$80.00. As the landlord was mainly unsuccessful in this application, aside from what the tenants agreed to pay during the hearing, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$675.00. No interest is payable on the deposit during the period of this tenancy. I find that as per the landlord's evidence, the tenants did not provide the landlord with written permission, by way of the move-out condition inspection report, to retain any amount from their security deposit. Therefore, I order the landlord to retain \$663.93 from the tenants' security deposit and to return the remainder of the deposit in the amount of \$11.07 to the tenants within 15 days of receiving this decision.

Conclusion

I order the landlord to retain \$663.93 from the tenants' security deposit in full satisfaction of this claim.

I order the landlord to return the remaining \$11.07 from the tenants' security deposit to the tenants within 15 days of receiving this decision.

I issue a monetary order in the tenants' favour in the amount of \$11.07 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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.

The remainder of the landlord's application is dismissed without leave to reapply.

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 08, 2017

Residential Tenancy Branch