



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- a monetary order for damage to the rental unit, 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;
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants' applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover his filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party. Neither party raised any issues with service. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

The hearing was adjourned to October 12, 2017, but was re-scheduled to November 1, 2017 due to technical difficulties with the teleconferencing system. On November 1, 2017 both parties attended the hearing via conference call and the hearing continued.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security/ pet damage deposits?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on July 1, 2016 on a fixed term tenancy ending on September 30, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated June 24, 2016. The tenants have been living in the rental property since March 2015. The monthly rent was \$1,550.00 payable on the 1st day of each month. A security deposit of \$750.00 and a pet damage deposit were paid. Both parties agreed that the tenancy ended on January 26, 2017 and that the landlord received the tenants' forwarding address in writing on February 1, 2017. Condition inspection reports for the move-in and the move-out were not completed by the landlords and the tenants together. Both parties confirmed that the landlords served the tenants with the 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) dated November 30, 2016 which displayed an effective end of tenancy date of January 31, 2017 and provided one reason as:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The landlord seeks a monetary claim of \$11,063.50 which consists of:

\$1,963.50	Recovery of Pest Control, Bed Bug Invoice
\$6,000.00	Estimated Replacement of hot tub
\$250.00	Estimated Cleaning
\$250.00	Estimated Carpet Cleaning
\$1,500.00	Estimated Painting
\$100.00	Estimated replacement of wardrobe door

\$1,000.00	Estimated cost for yardwork
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The landlords' claim that the tenants caused the rental premises to be infested with bedbugs as shown by the submitted invoice from the Pest Control Service Invoice. The landlords provided affirmed testimony that prior to the tenants moving in the landlords had occupied the rental premises for a short time. The landlords also stated that the previous tenants have provided a written statement in an email showing that there were no bed bug issues previously in the rental premises during their tenancy.

The landlords also claim that the tenants failed to clean the rental premises after vacating it, leaving it dirty requiring cleaning, carpet cleaning, painting, replacement of a wardrobe door and extensive Yardwork. The landlords clarified that all of the costs claims are based upon estimates on what they feel are owed. The landlords stated that the only invoice provided is exhibit #27, an invoice dated May 20, 2015 for Heat remediation treatment for bedbugs of \$1,963.50. The landlords rely upon an email from the previous tenants prior to these tenants in exhibit #26, which states that no bed bug issues were present during their tenancy from 2012 to 2015. The landlords clarified that the remaining items of claim are based upon their previous experience with contractors and what they feel they are owed. The landlords also provided direct testimony that through the neglect of the tenants, damage was caused to the hot tub which now requires replacement as it is beyond repair.

The tenants provided affirmed testimony disputing that they were not responsible for the infestation of bedbugs or that there was any neglect on their part in cleaning and maintaining the hot tub. The tenants argued that the damage noted by the landlord were present prior to the start of their tenancy.

During the hearing the tenants clarified that they seek a monetary claim of \$4,650.00 which consists of:

\$750.00	Return of Original Security Deposit
\$750.00	Return of Original Pet Damage Deposit
\$1,550.00	Compensation, Failing to Comply Sec. 38(6)
\$3,100.00	Compensation, Sec 51. Fail to take steps as per notice

The tenants claim that the landlords failed to return the original security and pet damage deposits within the allowed timeframe and as a result are owed compensation under section 38 (6) of the Act.

The tenants also claim that the landlords after having served them a 2 Month Notice for Landlord's Use of the Property failed to take steps for the stated purpose of the rental property by occupying the premises pursuant to Sec. 51 of the Act. The tenants claim that the landlords have failed to occupy the premises and have instead sold the property. The tenants rely upon a photograph of a realty page listed March 6, 2017, one month after the tenants had moved out. The tenants have also provided undisputed affirmed testimony that a telephone call was made to the listed realtor who revealed that the property had sold on March 31, 2017. The tenants have provided photographs of the "for sale" sign and the "sold" sign.

The landlords dispute this claim stating that they had moved in on February 10, 2017, and had every intention of occupying the rental premises, but because of employment commitments and financial constraints, sold the property on March 31, 2017.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I refer to the landlords' documentary evidence, exhibit #26, a email from a previous tenant stating that no bed bug issues were present from 2012 to March 2015 during their tenancy. I also note that a short time occurred between the old tenants and these tenants in March 2015. In conjunction with the invoice dated May 20, 2015 for Heat remediation treatment for bedbugs of \$1,963.50, I find on a balance of probabilities that the landlord has provided sufficient evidence that the infestation of bed bugs was caused by the tenants. As such, the landlords have established a claim for \$1,963.50.

On the remaining 6 items of claim noted below:

\$6,000.00	Estimated Replacement of hot tub
\$250.00	Estimated Cleaning
\$250.00	Estimated Carpet Cleaning
\$1,500.00	Estimated Painting

\$100.00	Estimated replacement of wardrobe door
\$1,000.00	Estimated cost for yardwork

On each of these claims, the landlords have failed to provide sufficient evidence that the tenants had caused damage that required cleaning, carpet cleaning, painting, the replacement of a wardrobe door and yardwork. Each of these claims were disputed by the tenants. No condition inspection reports were completed by both parties at the move-in or the move-out. The landlords have failed to provide any invoices or receipts for the cost(s) of these items and instead rely upon their estimation(s).

Section 51 (2) of the Residential Tenancy Act states in part that a tenant who receives a notice to end tenancy under section 49 of the Act is entitled to receive compensation equal to the equivalent of double the monthly rent payable under the tenancy agreement if the landlord has failed to take steps to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable time after the effective date of the notice or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice.

In this case, it is clear based upon the evidence of both parties that a 2 Month Notice was served by the landlords to the tenants with one reason listed as:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The landlords provided undisputed testimony that they had moved in on February 10, 2017 following the move-out of the tenants on January 26, 2017. The landlords stated that because of employment commitments and financial difficulties they were forced to sell their property as claimed by the tenants on March 31, 2017. I find that the landlords did fail to take steps to accomplish the stated purpose which was to occupy the rental unit for at least 6 months, although they did occupy the property for approximately a 1 month period. The tenants have established a claim for compensation under section 51 equal to double the monthly rent of \$1,550.00 totaling, \$3,100.00. I also find that the tenants are entitled to the return of the combined \$1,500.00 security and pet damage deposits.

The landlords have established a total monetary claim of \$1,963.50. The landlords are entitled to recovery of their \$100.00 filing fee.

The tenants have established a total monetary claim of \$4,600.00. The tenants are entitled to recovery of their \$100.00 filing fee.

In offsetting the claims of both parties, I find that the tenants are granted a monetary order for \$2,636.50.

Conclusion

The tenants are granted a monetary order for \$2,636.50.

This order must be served upon the landlords. Should the landlords fail to comply with the order, the 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: November 6, 2017

Residential Tenancy Branch