



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

AMENDED DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking 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 for the cost of the application.

Both tenants and an agent for the landlord attended the hearing, and one of the tenants and the landlord's agent gave affirmed testimony. The parties were given the opportunity to question each other. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

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 for cleaning costs, inconvenience, loss of use of a portion of the rental unit and recovery of hydro and water costs?

Background and Evidence

The tenant testified that this fixed term tenancy began on October 12, 2016, although the tenancy agreement, a copy of which has been provided for this hearing specifies that the tenancy began on November 1, 2016. The tenants paid a pro-rated amount for the partial month of October. The fixed term expired on April 30, 2017 at which time the tenancy was to end, and the tenants moved out a week earlier.

Rent in the amount of \$3,000.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a

security deposit from the tenants in the amount of \$1,500.00 as well as a pet damage deposit in the amount of \$1,500.00, all of which has been returned to the tenants. The rental unit is a single family dwelling that was occupied only by the two tenants, who are husband and wife.

The tenant further testified that during the move-in condition inspection the tenant noticed a black mark on the baseboard in the basement and asked the landlord's agent about it, yet nothing was indicated on the inspection report. It rained through the night and the tenant noticed a mark on the carpet and believed it looked like moisture beside the black mark. The tenant called the property manager on the move-in date, who found moisture and said the landlord would send someone to have it checked. An inspector arrived on October 27, 2016 who found moisture, but no one for the landlord attended. The tenant asked when the repairs might be made and was told sometime in January. The tenant advised that the tenants would be away for the first couple of weeks of January. On December 22, 2016 the tenant received a message that the repairs would be done on January 30. Drywall was removed which had mildew and an awful smell like mold. They ripped out the carpet and wall and left dehumidifiers and dryers in the rental unit until March 2.

During that time the tenant sent a message to the property manager requesting compensation for the use of hydro but received no reply. The tenant had to let workers in, who didn't want a key, and the tenant had to work them around the tenant's schedule which had to be changed from time to time. The landlord told the tenant to cooperate, so the tenant did so, but the landlord would not compensate the tenants. One doorway was blocked off which is access to the basement of the rental unit. The tenant intended to use that room for storage. The room is about 10 feet by 12 feet, which the tenants were not able to use from the beginning of the tenancy in October, 2016 to March 2, 2017.

The tenants have provided a Monetary Order Worksheet setting out the following claims:

- \$500.00 for cleaning;
- \$1,500.00 for inconvenience;
- \$1,200.00, being \$200.00 for each of 6 months of loss of use of the room; and
- \$50.00 for recovery of hydro and water usage.

The tenants also seek recovery of the \$100.00 filing fee, for a total claim of \$3,350.00.

The landlord's agent testified that the move-out condition inspection report was completed and signed off by the parties on April 24, 2017 and all deposits were returned.

The rental unit is a 2500 square foot house and repairs happen unexpectedly. The tenants elected to delay the repairs. The landlord has provided a copy of a letter from the tenant indicating that repairs should start in late January, and the landlord's agent ensured that that would be okay for the contractor and that no further damage would occur. The tenants were told it would take about 20 days to complete.

The tenants have not provided any power bills to determine the consumption of the dehumidifiers and dryers. Four months have gone by and the landlord's agent questions how the amounts in the tenants' Monetary Order Worksheet were determined.

In rebuttal, the tenant denies delaying the work. The contractor was busy till Christmas and could start in January. There was no indication that it was an urgent repair or that the contractors wanted to start earlier than January 30, 2017.

Analysis

Where a party makes a monetary claim against another party 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 the damage or loss suffered.

In this case, the landlord's agent submits that repairs happen, however when repairs required result in loss of use of a portion of the rental unit, a landlord is required to reimburse a tenant for that loss. The landlord's agent testified that the rental unit is 2500 square feet, and the tenant testified that the room lost is about 10 feet by 12 feet, or 120 square feet, which is about ~~20%~~ 4.8%. For the period of October 12, 2016 to March 2, 2017, that translates to about 4.5 months. I find that the tenants have established a claim of ~~\$2,700.00~~ \$648.00 ($\$3,000.00 \times 20\% \text{ ~~4.8\%~~ } = \600.00 \$144.00 $\times 4.5 = \$2,700.00$ \$648.00).

I have also reviewed the move-in condition inspection report which shows no issues with respect to cleaning required. The *Act* states that the move-in and move-out condition inspection reports are evidence of the condition of the rental unit, and therefore, I dismiss the tenants' claim for cleaning.

I agree with the landlord's agent that there is no evidence to support the \$50.00 claim for hydro and water. I find that to be an amount roughly estimated by the tenants and I am not satisfied that the tenants have established element 3 in the test for damages.

Having found that the tenants have established a claim for loss of use of a portion of the rental unit, I decline to order any further compensation for inconvenience. However, since the tenants have been partially successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

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 ~~\$2,800.00~~ \$748.00.

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 09, 2017

Amended: December 12, 2017

Residential Tenancy Branch