



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid utilities; damage to the rental unit; damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit and pet damage deposit. The landlord and two co-tenants appeared at the hearing. The parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord named three co-tenants in filing his Application for Dispute Resolution. Two of the three named tenants appeared at the hearing and they are referred to by initials BS and SB. The landlord had only served BS with the hearing documents. BS and SB confirmed that BS shared the landlord's hearing documents with SB. SB confirmed that he had an opportunity to review the landlord's hearing documents, understood the claims against him and had the opportunity to prepare a response to the claims against him. SB was agreeable to being deemed sufficiently served. Accordingly, I deemed SB to be sufficiently served pursuant to the authority afforded me under section 71 of the Act.

BS stated he did not share the landlord's hearing documents with the third co-tenant. Since the applicant/landlord has the burden to serve each respondent and the third co-tenant was not duly served by the landlord and she did not appear at the hearing, I excluded the third tenant as a party to this dispute.

The landlord confirmed receipt of the tenant's evidence package.

Although I was provided a considerable amount of evidence and submissions from both parties, with a view to brevity in writing this decision, I have only summarized or referred to the most pertinent evidence and positions of the parties.

It is important to note that at the conclusion of the teleconference call the landlord indicated that if he is not successful in his claims against the tenants he intends to file another Application for Dispute Resolution. The landlord was cautioned that a party is not at liberty to make the same claims against a party unless given leave to reapply; and, and a party may not split claims under the rules of Procedure.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover the amounts claimed against the tenants?
2. Is the landlord authorized to retain all or part of the security deposit and pet damage deposit?

Background and Evidence

The tenancy started May 1, 2016 for a fixed term set to expire on August 31, 2017. The rent was set at \$2,000.00 per month and the tenants were required to pay 60% of the utilities according to the tenancy agreement. The rental unit has two rental units with the tenants living in the lower unit. The landlord collected a security deposit of \$1,000.00 and a pet damage deposit of \$500.00. The tenancy relationship deteriorated and the parties executed a written mutual agreement to end tenancy with an effective date of June 30, 2017. All of the tenants vacated the rental unit on or before June 30, 2017.

The landlord and the third co-tenant participated in a move-in inspection together and a report was prepared and signed by the third co-tenant. The tenants point out that they did not get a copy of the move-in inspection report until they received the landlord's evidence package. The landlord submitted that a copy of the move-in report was given to the third co-tenant.

The tenants and the landlord met to do the move-out inspection together but the parties were in disagreement about the condition of the rental unit. According to the landlord the tenants refused to sign the move-out inspection report. According to the tenants the landlord told the tenants to leave the property before the inspection was completed. I noted that the landlord had provided a copy of the move-out inspection report and it was not fully completed. The landlord acknowledged that he did not indicate the condition of specific items in the house and merely completed one section on the move-out inspection report.

Below, I have summarized each of the landlord's claims against the tenants and the tenants' responses.

Unpaid hydro and utility bill

The landlord seeks to recover 60% of the hydro bill for the period of May 26, 2017 through June 30, 2017 in the amount of \$180.78.

The landlord seeks to recover 60% of the utility bill for the period of January 28, 2017 through June 30, 2017 in the amount of \$427.40.

The landlord provided copies of the hydro bill and the utility bill, and detailed calculations, in support of the amounts claimed.

The tenants were in agreement that they owed for hydro and the utility bill for the days put forth by the landlord; however, the tenants take issue with paying 60% of the bills. The tenants submitted that they found out that the other tenants on the property were paying the landlord 50% of the hydro and utility bill meaning the landlord was collecting 110% of the bills from the tenants, combined. The tenants are of the position they should not be required to pay more than 50% given the other tenants are paying the other 50%. The tenants produced a copy of the tenancy agreement between the landlord and the upper tenants in support of their position.

Initially, the landlord stated the upper tenants were paying 50% of the utility bills and then he quickly changed his testimony to deny it, claiming the upper tenants were only held responsible for paying 40% of the utility bills. The landlord claimed that he and the upper tenants changed their tenancy agreement to reflect an obligation to pay 40% although he did not produce a copy of an amended tenancy agreement or other written documentation to corroborate his position.

Damage to walls, doors, trim -- \$900.00

The landlord seeks \$900.00 to repair the following areas: paint over the black paint the tenants applied to trim and a door in living room; install a curtain rod removed by the tenants; repair and paint a bedroom wall; replace bedroom and bathroom door that have holes.

I noted that in the landlord's written submission, the landlord had indicated the amount claimed was based on estimates but an estimate was not provided as evidence. Nor,

did the landlord provide receipts or invoices for the purchase of supplies or labour, or a detailed accounting of the hours the landlord spent on the above tasks. The landlord testified that he obtained a verbal estimate of \$2,000.00 from a painter to repair drywall, sand and paint all of the affected areas; however, the landlord did the work himself so he limited the claim to \$900.00. The landlord stated the last time the house was painted was two years prior. The landlord provided photographs of several drywall patches, holes in interior doors and of the flooring.

The tenants acknowledged painting applying black paint to the trim and door in the rental unit. The tenants claim they had the landlord's permission to paint by way of an email exchange so long as the tenants did so at their expense. The tenants offered to sand the black paint off the door and trim but acknowledge they did not do so before the end of the tenancy. The tenants stated the black paint was easily sanded off and estimate that it would take approximately 3 hours to sand off the black paint. The tenants submitted that the walls were not in great condition at the start of the tenancy in that the walls had a number of imperfections and the paint job was splotchy. The tenants also provided photographs of the walls that appear to show rough patches of drywall, lack of transition pieces on the floor and trim boards.

The landlord was of the position the black paint could not be sanded off and had to be painted over.

Garbage removal, cleaning, floor fix -- \$500.00

The landlord seeks compensation of \$500.00 to repair clean pet feces from the floor and repair scratches in the floor; remove furniture and garbage left behind by the tenants; and clean the kitchen and bathroom.

As for the amount claimed, the landlord testified that he received an estimate of more than \$500.00 just to remove the garbage. The landlord claimed that he paid a carpenter \$300.00 to sand and paint the floor and he acknowledged that he does not have a receipt or invoice to demonstrate this. As for cleaning, the landlord did this himself over 1.5 days. The landlord provided photographs of abandoned possessions at the rental unit and piles of dirt from sweepings on the floor

The tenants acknowledge that they abandoned a couch at the property and suggest compensation of \$50.00 to have this removed is sufficient. The tenants stated that there had been items left behind by the landlord when their tenancy started and they had piled up these items outside of the house. The tenants pointed to emails

exchanged with the landlord concerning items left behind at the rental unit at the start of the tenancy.

The tenants had a dog that lived in the rental unit, and another one visited for a period of time, but point out that the floor was not new at the start of the tenancy, there were no transition pieces installed and pets had occupied the rental unit in the past. The tenants were of the position that the floor was showing signs of wear and tear but no large gouges. The tenants denied leaving pet feces on the floor and the rental unit was left clean. The tenants' photographs also include those of the floor, including missing transition pieces and trim boards and the living room floors that do not depict damage in the main traffic areas.

Lock change -- \$100.00

The landlord submitted that he gave the tenants three sets of keys and none were returned. The landlord claims to have changed two locks at an expense of \$50.00 each for a claim of \$100.00. I noted that the landlord had not provided a receipt for new locks and the landlord stated he did not keep the receipt.

The tenants acknowledge that they lost three keys but point out the three keys were for one exterior door and only one lock would need to be changed, not two. The tenants question the amount claimed by the landlord as being excessive since they priced out a new lock at \$25.00.

After hearing the tenants' position the landlord stated that he gave another key to the third co-tenant who was not at the hearing and the other key was for the other lock.

Missing TV -- \$100.00

The landlord claims to have left a 32" LCD TV at the rental unit for the tenants to use. The landlord acknowledged that the unit was not a furnished unit but that he left some small things behind at the rental unit, including the TV. The landlord seeks \$100.00 for the missing TV.

The tenants testified that there was no TV left at the rental unit by the landlord. Rather, the landlord had left a number of things they did not want, such as old vacuum cleaners under the stairs.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 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 whatever was reasonable to minimize the damage or loss.

As the applicant, the landlord bears the burden of proof in this case. The burden of proof is based on the balance of probabilities. It is important to note that 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.

Upon consideration of everything before me, I provide the following findings and reasons.

Unpaid hydro and utility bills

The parties were in agreement that the tenants owe the landlord for utilities for the latter part of their tenancy; however, the parties were in dispute as to whether the tenants are obligated to pay the landlord 60% of the utilities that were incurred by them and the other tenants occupying the residential property.

The tenants signed a tenancy agreement that clearly requires them to pay 60% of the hydro and utility bills. Although the term is clearly written, in order for a term to be enforceable, section 6(3)(b) of the Act also requires that the term is not unconscionable. The Residential Tenancy Regulations define “unconscionable” as:

“For the purposes of section 6(3)(b) of the Act [*unenforceable term*], a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party.”

In this case, the tenants provided documentary evidence to demonstrate that between the two tenancy agreements for the property, the landlord is entitled to 110% of the utility bills during the same period of time. When the tenants first entered into the tenancy agreement I accept that they would not have known the other tenants pay 50% of the utility bills. Since the landlord prepared both tenancy agreements the landlord would have had knowledge of what the other tenants are paying for utilities at the property and I did not hear any evidence to suggest the landlord disclosed this information to the tenants before they entered into their tenancy agreement. Accordingly, I am of the view that the landlord was acted in such a way so as to profit from the utility bills without the knowledge of the tenants and I find that to be unconscionable to the tenants.

Although the landlord claimed to have amended the tenancy agreement with the other tenants, the landlord did not provide any documentary evidence to corroborate his position and quite frankly I did not believe the landlord when he provided changing testimony with respect to this issue. Therefore, I find the landlord lacks credibility and I find the landlord created an unconscionable term.

In light of the above, I find the term in the tenancy agreement requiring the tenants to pay 60% of the utility bills is unconscionable and unenforceable. Since the tenants were agreeable to paying 50% of the bills, I award the landlord 50% of the bills he presented. Therefore, I award the landlord the following amounts for utilities:

Hydro: $\$502.16 \times 36/60 \text{ days} \times 50\% = \150.65

Water, sewer, garbage: $\$566.07 + 146.23 \times 50\% = \356.15

Damage, cleaning, garbage removal and lock change

The landlord's claim for cleaning and damage was largely in dispute although the tenants did acknowledge responsibility for some items. I found portions of the landlord's testimony to be questionable; such as: the move-in inspection report and the tenants testimony indicates that the tenants were provided with three keys only and when the tenants submitted that the three keys were for the same lock and the landlord should not be charging them for changing two locks, the landlord submitted that he gave another key for a different lock to the third tenant who was not served with the landlord's claim and at the hearing. Also, the landlord claims to have changed two locks and seeks compensation for changing two locks yet he did not keep the receipt he allegedly had when he purchased new locks. Given my reservations concerning the landlord's

credibility, I find the importance of having corroborating evidence even more critical in order for the landlord to succeed. Yet, in this case, the landlord did not produce any receipts, invoices, written estimates, with the exception of the utility bills, or call a witness such as a contractor to testify.

In light of the above, I am satisfied the landlord is entitled to compensation for the items the tenants have acknowledged responsibility for, which are: removing the black paint from the trim and door; losing three keys for the same lock; and, leaving behind a couch. Based on the tenants' submission that approximately three hours would be needed to sand off the black paint, I award the landlord compensation of \$100.00. I also award the landlord \$25.00 for a new lock and \$50.00 for removal of the abandoned couch as suggested by the tenants. The remainder of the landlord's claims for damage, cleaning, garbage removal and lock changing are dismissed without leave to reapply due to insufficient evidence to support the claims.

Missing TV

The parties were in dispute as to whether the landlord left a TV for the tenants to use. Upon review of the emails provided as evidence by the tenants, it is apparent the landlord left a number of possessions at the rental unit and the tenants did not want those possessions; however, there is no mention of a TV. Nor, does the tenancy agreement or move-in inspection report reflect that the landlord provided the tenants with a TV. Therefore, I find the landlord did not satisfy me that he provided the tenants with a TV and I dismiss this portion of the landlord's claim without leave to reapply.

Filing fee

Given the landlord's limited success in this application, I award the landlord recovery of \$25.00 of the filing fee he paid.

Security Deposit and Pet damage deposit

I authorize the landlord to deduct the amounts awarded to the landlord with this decision from the security deposit and I order the landlord to return the balance of the security deposit and pet damage to deposit to the tenants without further delay.

Below, I calculate the amount to be refunded to the tenants:

Security deposit		\$1,000.00
Pet damage deposit		500.00
Less: authorized deductions		
Hydro	\$150.65	
Water, sewer, garbage	356.15	
Removal of black paint	100.00	
Garbage removal	50.00	
Lock change	25.00	
Filing fee	25.00	- 706.80
Amount to be refunded to tenants		\$ 793.20

In keeping with Residential Tenancy Policy Guideline 17: *Security Deposits and Set-Off* I provide the tenants with a Monetary Order in the amount of \$793.20 for the tenants to serve and enforce upon the landlord to ensure payment is made as ordered.

Conclusion

The landlord had limited success in his claims against the tenants and has been authorized to deduct \$706.80 from the tenants' security deposit. The remainder of the landlord's claims are dismissed without leave to reapply.

The landlord has been ordered to repay the tenants the balance of the security deposit and the pet damage deposit in the amount of \$793.20 without further delay. The tenants are provided a Monetary Order in the amount of \$793.20 to ensure payment is made.

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: December 29, 2017

Residential Tenancy Branch