Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This proceeding dealt with the landlord's amended application for monetary compensation against the tenant for unpaid rent and utilities; damage to the rental unit; other damages or loss under the Act, regulations or tenancy agreement; and, a request for authorization to retain the security deposit. Both parties appeared or were represented at the hearing and 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 hearing was held over three dates and two Interim decisions were issued. The Interim Decisions should be read in conjunction with this decision.

In this decision I have referred "tenants" because there were two tenants named on the tenancy agreement and both tenants appeared for the hearing; however, the landlords only named one tenant in filing the Application for Dispute Resolution. The landlord did not request that the style of cause be amended. Accordingly, the style of cause and the Monetary Order that accompanies this decision only names one tenant even though I heard from both tenants during this proceeding.

As seen in the second Interim Decision I had authorized and ordered the parties to submit and serve additional evidence with respect to payment of rent throughout the tenancy. I received evidence from both parties and the parties confirmed that they had received evidence from the other party. The tenant's advocate stated the landlord's evidence was received on November 25, 2017 which is beyond the 14 day time limit for serving the additional evidence. The tenant's advocate indicated the late service was unfair since the landlord had the tenant's evidence much longer than the tenants had the landlord's evidence. The landlord stated he sent the evidence to the tenant within the time limit permitted. I found this issue largely inconsequential considering the hearing was taking place on January 18, 2017 and receiving the landlord's evidence on November 25, 2017 left sufficient time for the tenants to review the landlord's evidence. Further, the most significant discrepancy with respect to payment of rent was that pertaining to payment in April 2016 which was provided in the tenant's evidence. Accordingly, I found the tenant's evidence to be the primary focus and it has been admitted in consideration of the tenant's position.

Also, as seen in the second Interim Decision, I had ordered the landlord to return the tenant's post-dated cheques. The tenant's advocate confirmed return of the post-dated cheques.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation in the amounts claimed against the tenant?
2. Are the landlords authorized to retain the tenant's security deposit?

Background and Evidence

The parties executed a written tenancy agreement for a tenancy set to commence on May 1, 2016 for a fixed term set to expire on April 30, 2017. The monthly rent was set at $2,700.00 payable on the 26th day of every month. The landlords collected a security deposit of $1,350.00. The tenants vacated the rental unit on February 26, 2017.

The parties participated in a move-in inspection together and a move-in inspection report was prepared. The landlord invited the tenant to participate in a move-out inspection but the tenant declined to participate. The landlord proceeded to inspect and prepare a move-out inspection report without the tenants present. The tenant stated that she declined the opportunity to participate in the move-out inspection given her pregnancy and the landlord's aggressive behaviour.

Below, I summarize the landlords' claims against the tenant, as amended, and the tenant's responses, as provided by the tenant, the co-tenant (the tenant's wife) and the tenant's father-in-law, acting as an advocate for the tenant.

Unpaid Rent for February 2017 -- $2,700.00

It was undisputed that the last payment the tenants made to the landlords for rent was received by the landlord on January 27, 2017 and the tenants remained in possession of the rental unit until February 26, 2017.

The landlord submitted that the payment made on January 27, 2017 was for January 2017 rent. The tenants submitted that the payment was for February 2017 rent. I determined that the parties' dispute revolves around whether the tenants paid rent in advance or not which led to me ordering additional evidence during the period of adjournment.

Upon receiving the additional evidence from the parties, I noted that the discrepancy in the parties' evidence pertains to whether the first rent payment was made on April 27, 2016 or May 26, 2016.

The landlord submitted that the first rent payment he received was on May 26, 2016 and that this paid rent for the period of May 1 – 31, 2016 since the tenancy started on May 1, 2016.

The tenants submitted that the first rent payment to the landlord was made on April 27, 2016 and the payment was for rent for the month of May 2016 and that the payment of May 26, 2016 was for rent for the month of June 2016 and so forth.

The landlord pointed out that the tenant's evidence, which was comprised of their bank statements, was barely legible; and the bank statements do not identify the recipient of the payment. The landlord submitted that the tenants' evidence does not demonstrate the landlord received the payment and that the tenants could have provided copies of the emails they would have received when the payment is deposited by the recipient.

The landlords' evidence was comprised of Interac emails the landlord received when the tenants sent rent payments to him via e-transfer. The first email provided by the landlord is dated May 26, 2016. The landlords did not provide copies of their bank statements showing deposits of rent. The tenants were of the position they provided all of the evidence available to them and that the landlord could have easily withheld the evidence pertaining to the payment April 27, 2016 payment since the landlord received the tenants' evidence first and then sent his evidence to them.

Loss of rent -- $1,260.00

The landlord submitted that the tenants breached the fixed term tenancy agreement by ending the tenancy early; the tenants did not give him sufficient notice of their intention to end the tenancy early; and, the rental unit was vacant until he re-rented it starting on March 15, 2017. The landlords seek to recover loss of rent until the rental unit was re-rented in the amount of $1,260.00.

At the second hearing date, the tenants initially provided various positions with respect to ending the tenancy early; including submissions that the landlords put the house for sale and the tenant was expecting another child and the tenants did not want to move shortly after giving birth; and, the tenants gave the landlord oral notice of their intention to end the tenancy early.

The tenants also submitted that the landlords were acting fraudulently in representing to the property tax authorities and insurance company that the landlords resided at the rental unit. The tenants pointed to the Addendum and evidence of mail addressed to the landlords at the rental unit to show that bills were to remain in the landlords' name at the rental unit address and that the tenants were prohibited from returning any mail addressed to the landlords to sender. The tenants stated they did not wish to be complicit with such illegal activities. I informed the parties that the tenants are at liberty to report this information to the respective authorities but that I would not consider it as a legal basis for ending the tenancy early.

During the third hearing date the tenants indicated they were agreeable to compensating the landlord for loss of rent in the amount claimed of $1,260.00 out of a gesture of good faith. Accordingly, I accepted their position and I did not seek further response from the landlord.

Natural gas -- $140.37 + $60.22

The landlords seek compensation of $140.37 for the natural gas bill received for the period up to February 22, 2017. The landlord provided a copy of the bill in the evidence package. The tenants were agreeable to paying the landlord for this bill.

The landlords seek compensation of $60.22 for the period up to March 14, 2017. The tenants were not agreeable to paying the landlords this amount, pointing out that the landlord had not provided a copy of the bill.

Hydro for January and February 2017 -- $129.85

The landlords requested compensation of $129.85 for the last hydro bill. The tenants were agreeable to paying the landlords this amount.

Water, sewer, recycling bill for May 1, 2016 through March 14, 2017 -- $784.94

The landlords submitted that these municipal services are billed annually by the City and the bill for the 2016 tax year was $899.95. The landlords pro-rated the water, sewer, recycling charge for the year to determine the cost for the period of May 1, 2016 through March 14, 2017 in arriving at the claim of $784.94 against the tenant.

The tenants acknowledge that the tenancy agreement does not indicate water, sewer and recycling are included in rent; however, the tenants submitted that they thought the landlords had waived the charge for these municipal services since they did not seek a monthly payment from them as provided for in the Addendum.

Term 19 in the Addendum provides:

> "The Tenants understand and agree that all utilities – Hydro, Gas, Water – and all municipal services bill and any bills associated with their living at this Property (except the Property Taxes) shall be covered by monthly payments and/or according to the billing period for the utilities or the services upon receipt of the bills from the Landlords within 5 (FIVE) business days."

Term 22 in the Addendum provides:

> "The Tenants understand & agree that the annual Water bill forms part of the annual Property Taxes bill along with Sewage and other Municipal Services. A monthly cost of

> these utilities and services shall be calculated based on the Property Taxes annual bill breakdown for each utility and service specifically and shall be paid by the Tenants."
>
> [Reproduced as written with emphasis added by tenants]

The tenants submitted that they did not receive a calculation or request for a monthly payment from the landlord.

The landlord's response to the tenants' position was evasive and non-responsive initially but eventually, with further probing by me, the landlord stated he had calculated the monthly charge but that he did not present it to the tenants. However, the landlord was of the position the tenant still owes for the water, sewer and recycling, as claimed.

Cleaning and Move-Out Deficiencies – $1,000.00

The landlords claimed a single amount of $1,000.00 for various items they saw as needing cleaning or being "deficient." Below, I provide a description of the individual items the landlords considered as being deficient or needing cleaning and the tenants' responses.

1. Damaged carpeting

The landlord submitted that the tenants damaged the carpeting in the "baby room" with paint when they painted the walls. The landlords had not claimed a specific amount for this damage in making the claim. During the first hearing session, the landlord stated he obtained a quote but that he could not recall the amount and he had not provided it in evidence. At the start of the second hearing, the landlord stated he had obtained a quote of $458.00 to replace the carpeting in the baby room. The landlord stated he has not yet replaced the carpeting as the new tenants were willing to take the property as is. The landlord did not know the age of the damaged carpet.

The tenants submitted that the carpeting was older, likely 15 years old. The tenants submitted that after their tenancy ended the landlord advertised the rental unit as being in "immaculate" condition which is inconsistent with his allegation that the carpeting was so damaged it requires replacement.

The landlord acknowledged that he described the property as being in immaculate condition but he was of the position that describing the property as being immaculate does not mean the carpeting was not damaged and needs replacement.

2. Motor oil stains on garage floor

The landlord submitted that the tenant left motor oil stains on the garage floor, most likely from repairing vehicles in the garage. During the first hearing, the landlord stated he had obtained an

estimate to have the stains removed but that he could not recall the amount of the estimate and he did not provide a written estimate as evidence. At the commencement of the second hearing, the landlord stated he had obtained a quote of $132 to remove the oil stain. During the third hearing date the landlord stated that the oil stain cannot be removed except by grinding the concrete floor. The landlord stated he has not had the stain removed since the new tenants accepted the rental unit as is and they park vehicles in the garage.

The tenants were of the position they left the garage cleaner than it was when their tenancy started. The tenants stated they rarely used the garage for parking and that it was largely used for storage, including therapy equipment for their autistic son.

3. Lawn clippings

The landlord was of the position the tenants left lawn clippings behind at the property, in violation of the tenancy agreement; however, he was not seeking any compensation for this. Accordingly, I did not seek a response from the tenants.

4. Cleaning

The landlord submitted that he spent 20 hours over 2 days cleaning the rental unit. The landlord submitted that several areas required cleaning, including the fridge and windows.

The tenants submitted that they left the rental unit clean, and cleaner than when they moved in. The tenants questioned when the landlord's photographs were taken since they do not reflect the condition of the property when they left. The tenants also pointed out that during the tenancy the rental unit was listed for sale and because of that they kept the house in a high level of cleanliness for showings.

Both parties pointed me to their respective photographs in support of their respective positions. The landlord was of the position his photographs are superior since they are digital and in colour whereas the tenants' photographs are black and white photocopies.

Landlord's time – $1,560.00 (24 hours at $65.00 per hour)

The landlord seeks compensation for the time he spent preparing for this dispute. The Act does not provide for recovery of costs incurred to prepare for or participate in a dispute resolution proceeding except for the filing fee. Accordingly, I dismissed this claim summarily.

Analysis

I was provided a considerable amount of evidence and submissions from both parties. I have considered all of that which was before me; however, with a view to brevity in writing this decision, I have only summarized the most relevant facts, evidence and positions presented by

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

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 applicants, the landlords bear 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.

Unpaid rent – February 2017

Section 13 of the Act requires that every tenancy agreement must include certain terms, including the day the tenancy starts and the amount of rent payable for a specific period.

The tenancy agreement before me provides that the tenancy started on May 1, 2016 and that rent of $2,700.00 was payable each month "**on the first day of the rental period which falls on the 26 day of each month**".

Since the rent was payable on the 26th and the tenancy agreement and the tenancy agreement provides that the rental period starts on the 26th day of the month, I find the rental periods for this tenancy ran from the 26th to the 25th of every month.

Most commonly, rent is paid in advance or at the start of the rental period. Rarely is rent paid after the rental period commences. The tenancy agreement executed by the parties in this case provides just that: that the first day of the rental period falls on the 26th day of the month and that rent was payable on the 26th day of the month. I find the tenants' position that they were required to pay rent in advance to be consistent with their tenancy agreement. Therefore, I find the payment received on January 27, 2017 was for the period of January 26, 2017 through February 25, 2017.

In light of the above, I reject the landlord's position that rent was not paid for the month of February 2017. Rather, it is clear to me that the real dispute revolves around whether the landlord was paid for the period of May 1 – 25, 2016.

Where a tenancy starts part way through a rental period, as this one did, it common for a landlord to require and the tenants to pay pro-rated rent from the start date of the tenancy to the day of the first full rental period. The tenants were of the position they paid for this period, if not more by way of a $2,700.00 payment made on April 27, 2016. The landlord argued the tenants did not provide sufficient evidence to show the landlords received this payment.

The tenants' evidence of rent payments consists of bank statements with the first bank statement being for the month of April 2016. The bank statement shows that an "MB-EMAIL MONEY TRF" of $2,700.00 on April 27, 2016 and an "MB-EMAIL MONEY TRF" of $1,350.00 on April 28, 2016. I find the payment of $1,350.00 is consistent with the amount of the security deposit. The tenancy agreement, which was executed on May 1, 2016, indicates the security deposit of $1,350.00 was due by May 1, 2016; however, in the landlord's email of February 27, 2017 the landlord wrote, at point number 4: On April 28, 2016 you transferred to me a $1,350 Security deposit…" As such, it would appear to me that the tenants' bank statement for April 2016 accurately reflects an e-transfer of the security deposit to the landlord. There is no indication that the e-transfer made on April 27, 2016 was to the landlord; however, none of the other e-transfers to the landlord for rent and the security deposit indicate the payee yet it is known that the landlord received every other rent payment and the security deposit as reflected on the tenants' bank statements. Considering there was a payment in the amount of the monthly rent on or about the day rent was ordinarily due I find it reasonably likely that this e-transfer was for rent for the rental unit.

The landlord chose to provide the Interac emails as evidence of the rent payments he received. The tenants argued the landlord could have easily just omitted the emails he received in April 2017.

Certainly, both the parties could have provided more evidence. As the landlord pointed out the tenants could have provided email confirmations they received when the landlord deposited the funds. Similarly, I find the landlords could have provided copies of their bank statements to demonstrate deposits of rent payments, or lack thereof, and the landlords did not.

I find the evidence before me is inconclusive; however, I find there is a reasonable likeliness that the tenants did pay rent to the landlords on April 27, 2016 and since the landlords have the burden to prove their claims, I make no order for the tenants to pay the landlords rent for the period of May 1 – 25, 2016.

Loss of rent to March 14, 2017

The landlords requested and the tenants agreed to compensate the landlords for loss of rent for the period up March 14, 2017 in the amount claimed of $1,260.00. Therefore, I grant the landlords' request for this amount.

Natural gas

The landlords requested and the tenants agreed to compensate the landlords for the natural gas bill up to February 23, 2017 in the amount of $140.37. Therefore, I award the landlords this amount.

The landlords requested $60.22 for natural gas for the period up to March 14, 2017 which the tenants rejected because they were not presented a copy of the bill.

I note that the landlords did not submit a copy of the natural gas bill for the subsequent month despite having over five months after filing their claim to submit additional evidence. I find I am unable to verify the amount claimed and I deny this claim.

Hydro

The landlords required and the tenants agreed to compensate the landlord $129.85 for the last hydro bill. Therefore, I award the landlords this amount.

Water, sewer, recycling

Upon review of terms 18 through 22 in the Addendum to the tenancy agreement, as they pertain to the tenants' obligation to pay utilities, I note that portions of the terms conflict with the *Residential Tenancy Act*. More specifically, the Act provides that where a tenant is to pay a landlord for utilities, the tenant has 30 days to pay the utility bill before the landlord may take action. Yet, in term 19 the landlords require the tenants to pay the utility bill within five business days of receiving a copy of the bills from the landlords. Section 6 of the Act provides that a term in a tenancy agreement, including a term in an Addendum, which conflicts with the Act is not enforceable. Accordingly, the landlords may not take enforcement action against a tenant if the tenant fails to pay the utility bill within five business days.

Despite finding the five day deadline for paying the utility bill is not enforceable; I do not find the balance of the subject terms to be in conflict with the Act. In reading section 3 of the tenancy agreement and terms 19 and 22 of the Addendum I find the terms are consistent in communicating to the tenants that they are to pay for water, sewer and recycling costs since it is not included in the rent payment.

I understand the point raised by the tenants, which was that the landlords were to calculate a monthly cost for the water, sewer and recycling bill and he did not. I also find the landlord's response that he calculated the monthly charge but did not present it to the tenants to be

completely absurd and unbelievable. Nevertheless, I find the cost to the tenants in paying the municipal services levy by way of this claim or by way of monthly instalments would be the same and non-prejudicial to the tenants. Therefore, I allow the landlords to recover the cost of the municipal services by way of this claim.

The landlords have provided the 2016 property tax bill which includes a levy of $899.95 for water, sewer and recycling for the year. Accordingly, I find the landlords request for a pro-rated portion up to March 14, 2017 in the amount of $784.94 to be accurate and I grant that amount to the landlords.

Cleaning and move-out deficiencies

The landlords provided a copy of the move-in and move-out inspection report, and photographs, to demonstrate damage and unclean condition at the end of the tenancy. The tenants also provided photographs to show the condition of the rental unit at the start and end of the tenancy.

I have accepted and considered the photographs of both parties in making this decision and I have given appropriate weight to the photographs as explained below in the analysis of each claim below.

I have also considered the condition inspection reports even though the tenants were not present for the move-out inspection. It was undisputed that the landlord invited the tenants to participate in the move-out inspection and they declined to do participate. I understand the tenants' reluctance to meet with the landlord as the landlord did present himself as argumentative, domineering and aggressive during the hearing. However, there is no exemption under the Act or Regulations for a tenant to refuse to participate in the move-out inspection that has been proposed by the landlord. The Regulations permit a tenant to counter-propose another date/time for the move-out inspection or appoint an agent to represent him/her. Or, a tenant may have a witness or advocate with them if they anticipate conflict. If a tenant is given the opportunity to participate in a move-out inspection the tenant extinguishes the right to seek return of the security deposit pursuant to section 36 of the Act.

In this case, I find the tenants extinguished the right to return of the security deposit under section 36 of the Act; however, retention of the security deposit due to extinguishment is not a bonus for the landlords and the security deposit shall be used to offset the landlords' losses that I find the landlords entitled to recover.

1. Damaged carpeting

Upon review of the landlords' photographs, I see carpeting in a bedroom that appears stained with green paint. However, when I look at the move-out inspection report the landlord did not indicate any paint stain on the carpeting. Also of consideration is that it was undisputed that the landlord advertised the rental unit as being "immaculate" after the tenancy ended. The definition

of “immaculate” is: clean, spotless, ultraclean, pristine, unsoiled, unstained, unsullied. The landlord also stated that the replacement tenants accepted the rental unit without replacement of the carpeting without decreasing the rent. Accordingly, I find there is conflicting evidence that leads me to question whether the carpet staining remained as significant as it appears in the photograph the landlord provided.

The landlord did not have the carpeting replaced, but claims he has a cost estimate to do so. The landlord had not provided the estimate as evidence despite having five months after making the claim to submit such evidence. Also, of consideration is that the carpeting is of an unknown age and the landlord did not make any allowance for depreciation of the carpeting in seeking replacement cost.

In light of the above, I find I was provided conflicting evidence as to the carpeting being damaged; and, if the carpet did have paint stains, I find the loss suffered by the landlords has not been verified. Therefore, I find the landlords have not met their burden of proof with respect to seeking compensation for this alleged damage and I make no award for compensation.

2. Motor oils on garage floor

The landlords provided photographs showing what appears to be fresh oil drips on the garage floor, but there are also signs of older stains on the floor. The move-out inspection report also reflects oil stains on the garage floor. As such, I find there is sufficient evidence to conclude oil stains were made on the garage floor during this tenancy. Despite the oil stains apparent at the end of the tenancy, the rental unit remained “immaculate” according to the landlord in his advertisements after the tenancy ended which indicates to me that the staining did not remain that significant. Accordingly, at issue is the value of the landlords’ loss, if any. The landlord claims he obtained a quote to have the floor cleaned but he did not produce the estimate as evidence despite having five months to provide additional evidence after making the claim. The landlord acknowledged that he has not yet had the floor cleaned or the oil stains removed by grinding the floor yet the landlords were able to re-rent the unit without a reduction in rent which indicates to me that the oil stains did not devalue the property. Also of consideration is that a garage floor or a driveway is intended to be used to park vehicles. Some staining should be expected as ordinary wear and tear. All these things considered, I make no award for compensation to the landlords.

3. Cleaning

The landlords seek compensation for 20 hours of time spent cleaning and the tenants objected to this claim.

The move-out inspection report indicates a number of dirty areas, including: trim, window tracks in multiple rooms, oven and hood fan, bathroom mirror, shower, toilet, exterior glass and frames, washer, laundry room floor, garage wall, and, the furnace/water heater/plumbing. The

landlords did not provide a detailed breakdown of the hours spent doing certain tasks in support of seeking compensation for 20 hours. The landlords provided relatively few photographs of the rental unit at the end of the tenancy in support of the amount of time that would be reasonable to clean these areas. The landlords' photographs show the side of the range that is dirty; dust on what appears to be an appliance that may be fridge or air conditioner; and, a dead fly in the window track.

The tenants provided photographs of the rental unit that depict a rental unit that appears reasonably clean; however, as pointed out by the landlord, the photographs are not as clear since they are black and white and I note they are taken further away than the landlords' photographs.

Based on the above, I accept that some additional cleaning was required at the end of the tenancy; however, I find the allegation that 20 hours were needed to bring the rental unit to a reasonably clean state to be unsupported or excessive given the photographic evidence presented by both parties. Therefore, I limit the landlords' award for compensation to four hours at $20.00 per hour for an award of $100.00.

Filing fee, Security Deposit and Monetary Order

The landlords had limited success in this application and I award the landlords recovery of one-half of the $100.00 filing fee for an award of $50.00.

I tenants extinguished their right to return of the security deposit; however, the tenant's security deposit has been offset against the losses proven by the landlords.

Based on all of the above, I provide the landlords with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Loss of rent	$1,260.00
Natural gas	140.37
Hydro	129.85
Water, sewer, recycling	784.94
Cleaning	100.00
Filing fee (partial award)	50.00
Less: security deposit	(1,350.00)
Monetary Order	$1,115.16

Conclusion

The landlords were partially successful and have been authorized to retain the security deposit and have been provided a Monetary Order for the balance of $1,115.16 to serve and enforce upon the tenant.

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: January 26, 2018

Residential Tenancy Branch