



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MND MNDC FF

Introduction

This hearing was convened as a result of the landlords' Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") for which the amended application indicates the application is for a monetary order for unpaid rent or utilities, for compensation for damage or loss under the *Act*, regulation or tenancy agreement, for damage to the rental unit, site or property, and to recover the cost of the filing fee.

The landlords attended the teleconference hearing and gave affirmed testimony. During the hearing the landlords were given the opportunity to provide his evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The landlords testified that the Notice of Hearing, amended application and documentary evidence were served on the tenants by registered mail on December 14, 2017 with one package addressed to each of the two tenants separately. The landlords provided two registered mail tracking numbers through their testimony, which have been included on the cover page of this decision for ease of reference. The online registered mail tracking website information indicates that both registered mail packages, which the landlords testified was addressed to the tenants' new address; determined through someone they know, were signed for and accepted on December 15, 2017. Based on the above, I find the tenants were served on December 15, 2017 which is the date the registered mail packages containing the Notice of Hearing, amended application and documentary evidence were signed for and accepted at the post office. In addition to the above, the landlords stated that the tenants communicated with them by email on January 12th, 2017 that they could not open the contents of the CD and as a result, the female landlord personally served the photo evidence from the CD in printed form to both tenants at their new address on January 15, 2017, between 1:00 p.m. and 2:00 p.m.

Based on the above, I find the tenants have been sufficiently served and the hearing proceeded without the tenants present. The hearing lasted a total of 71 minutes and the tenants did not call into the hearing at any point during the hearing.

Preliminary and Procedural Matters

At the outset of the hearing, the landlords were advised that based on their previous decision dated March 17, 2017 ("previous decision") which resulted in the landlords being granted a monetary order in the amount of \$6,000.00 for unpaid rent of \$3,000.00 for the months of February and March of 2017. The

file number of the previous decision has been included on the cover page of this decision for ease of reference.

The landlords were also the landlords were advised that the maximum combined monetary claim would be \$35,000.00 under the *Residential Tenancy Act*. The landlords stated that the amount of \$34,889.38 listed on the amended application includes the \$6,000.00 portion from the previous decision which I advised the landlords they were not authorized to do as they have already received a monetary order for unpaid rent for February and March 2017. Therefore, the landlords were advised that I was reducing their \$34,889.38 by the \$6,000.00 amount they have previously been granted which results in the reduced monetary claim before me of \$28,899.38.

The landlords provided their email addresses at the outset of the hearing which was confirmed by the undersigned arbitrator. The landlords confirmed their understanding that the decision would be emailed to them and that the tenants would have their copy sent by regular mail. The landlords were also advised that any applicable orders would be emailed to the landlords.

Issues to be Decided

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on August 6, 2015 and after one year, another fixed term was entered into which reverted to a month to month tenancy after August 31, 2017.

The landlords' amended monetary claim of \$28,899.38 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. 4 months of unpaid rent/loss of rent (April, May, June and July 2017 @ \$3,000.00 per month X 4 months)	\$12,000.00
2. Unpaid utilities (September 28, 2016 to November 29, 2016)	\$1,014.43
3. Unpaid utilities (November 29, 2016 to January 27, 2017)	\$1,830.38
4. Unpaid utilities (January 28, 2017 to March 27, 2017)	\$1,492.97
5. Unpaid utilities (March 27, 2017 to May 29, 2017)	\$872.22
6. 2 months of loss of rent (August and September 2017)	\$6,000.00
7. Unpaid utilities (May 30, 2017 to July 27, 2017)	\$483.96
8. Unpaid utilities (July 27, 2017 to September 28, 2017)	\$465.59
9. Writ of Possession application costs	\$120.00
10. Bailiff costs	\$867.72
11. Cleaning costs	\$400.00
12. Paining costs due to damage	\$2,400.00
13. Garden clean-up	\$350.00
14. Plants part one	\$100.77

15. Plants part two	\$95.18
16. Stove element	\$44.75
17. 3 keys replacement	\$6.35
18. Replacement of light bulbs x 16	\$44.76
19. Propane costs	\$310.30
TOTAL	\$28,899.38

Regarding item 1, the landlords have claimed \$12,000.00 for loss of the monthly rent of \$3,000.00 per month for the 4 months of April, May, June and July of 2017, inclusive. In the previous decision, the landlords received an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") through an ex-parte Direct Request proceeding. As noted above, the landlords also received a monetary order in the amount of \$6,000.00 for the unpaid rent for the months of February and March of 2017 which have not been considered in this application. The landlords testified that the tenants refused to vacate the rental unit once served with the order of possession and continued to occupy the rental unit until September 30, 2017 when the tenants finally vacated the rental unit.

Regarding item 2, the landlords testified of the four hydro meters A, B, C, and D, the tenant were responsible for meters C and D only and that they have only been charged their portion in the following. The landlords referred to the tenancy agreement and addendum which supports that heat and electricity were not included in the monthly rent and that the tenants acknowledged that they were responsible for their utility bills. For item 2, the landlords have claimed \$1,014.43 and supplied bills in support the tenants' portion of utilities for the time period as indicated in the table above as item 2.

Regarding item 3, the landlords submitted bills which total \$1,830.38 for unpaid utilities as claimed in the table above as item 3.

Regarding item 4, the landlords submitted bills which total \$1,492.97 for unpaid utilities as claimed in the table above as item 4.

Regarding item 5, the landlords submitted bills which total \$872.22 for unpaid utilities as claimed in the table above as item 5.

Regarding item 6, the landlords have claimed \$6,000.00 for loss of rent of \$3,000.00 per month for the months of August and September of 2017, inclusive. The landlords testified that due to the tenants refusing to move out based on the order of possession, that they suffered additional loss of rent until they vacated on September 30, 2017.

Regarding item 7, the landlords submitted bills which total \$483.96 for unpaid utilities as claimed in the table above as item 7.

Regarding item 8, the landlords submitted bills which total \$465.59 for unpaid utilities as claimed in the table above as item 8.

Regarding item 9, the landlords have claimed \$120.00 for the cost to obtain a Writ of Possession as the tenants failed to vacate after being served with the Order of Possession which required the landlords to

have to enforce the Order of Possession in Supreme Court. The landlords supplied a copy of the Supreme Court receipt in the amount of \$120.00 for the cost to apply for a Write of Possession which was granted to the landlords.

Regarding item 10, the landlords have claimed \$867.72 for the cost to hire a court approved Bailiff to evict the tenants who refused to vacate after being served with the Order of Possession. The landlords referred to the invoice from the Bailiff in the amount of \$867.72 in support of this portion of their monetary claim.

Regarding item 11, the landlords have claimed \$400.00 for cleaning costs. The landlords referred to the outgoing condition inspection report which supports this portion of their monetary claim. The landlords submitted a copy of the Final Opportunity to Schedule a Move Out Inspection document which the landlords stated was served on the tenants and that the tenants failed to attend the move-out inspection scheduled for October 14, 2017 at 11:00 a.m. The landlords also referred to a document which supports that a cleaner spent 16 hours at \$25.00 per hour to clean the rental unit after the tenants vacated the rental unit and lists all of the work performed by the cleaner.

Regarding item 12, the landlords have claimed \$2,400.00 for the cost to repair damaged paint that the landlords testified went beyond reasonable wear and tear. The landlords stated that while the paint was new in 2015, the tenants caused purposely damage on the walls which was supported by photos showing large gouges in the walls and what the landlords described was an unreasonable number of holes in the walls. The landlords submitted an email that the landlords confirmed was from the painter and confirms that \$2,400.00 was owed for four major areas of work performed which is listed within the email.

Regarding item 13, the landlords have claimed \$350.00 for gardening work required that the tenants failed to do as part of their tenancy agreement and addendum. The landlords referred to a document submitted which indicates that a gardener spent 15 hours at \$20.00 per hour digging dead shrubs out, shrub trimming, using the hoe to remove weeds, planting and staking of new plants, raking and removing debris, and another two hours at \$25.00 per hour for labour for weed eating and using a leaf blower as required. The landlords referred to "Yard Work" section of the tenancy agreement addendum which according to the landlords, supports that the tenants failed to comply with the section entitled "Yard Work".

Regarding items 14 and 15, the landlords have claimed \$100.77 and \$95.18 respectively for the cost of replacing the dead plants that the landlord testified were not maintained by the tenants and that the tenants allowed to die due to neglect. The landlords referred to receipts in support of this portion of their claim.

Regarding item 16, the landlords have claimed \$44.75 for the cost to replace a stove element that was missing after the tenants vacated the rental unit. The landlords referred to a receipt and the condition inspection report in support of this portion of their claim which indicates that a stove element was missing and that \$44.75 was paid to replace it.

Regarding item 17, the landlords have claimed \$6.35 for the cost to replace three keys that were not returned by the tenants. The landlords referred to a receipt in the amount of \$6.35 in support of this portion of their claim.

Regarding item 18, the landlords have claimed \$44.76 to replace 16 burned out or missing light bulbs. The landlords referred to a receipt submitted in evidence in the amount of \$44.76 and testified that there

were a total of 16 light bulbs that were either missing or burned out that required replacement and that light bulbs are the responsibility of the tenants to replace before the vacate.

Regarding item 19, the landlords have claimed \$310.30 for the cost to replace the propane that was used by the tenants and not replaced. The landlords testified that propane was not included in the monthly rent which is supported by the tenancy agreement submitted in evidence. The landlords also referred to an invoice which supports the amount claimed of \$310.30 for propane and referred to the condition inspection report which indicated what the propane level was at the start of the tenancy compared to the end of the tenancy and that it required \$310.30 to put the propane level back to the same level as the start of the tenancy. The landlords also provided photos of the comparison of the propane gauge levels showing the start of the tenancy level compared to the end of the tenancy level.

Analysis

Based on the undisputed documentary evidence and undisputed testimony of the landlords provided during the hearing, and on the balance of probabilities, I find the following.

As the tenants were served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenants.

Firstly regarding the unpaid rent and loss of rent for items 1 and 6 which total \$18,000.00 I find the tenants breached section 26 of the *Act* which requires tenant to pay rent on the date that it is due and that by refusing to vacate the rental unit once served with the order of possession, that the landlords are entitled to the full amount claimed of \$18,000.00 for items 1 and 6 as claimed.

In addition, for items 2, 3, 4, 5, 7, and 8, I find the tenants are entitled to the full amount of unpaid utilities as claimed by the landlords and which I find is supported by their documentary evidence and testimony.

Regarding items 11 and 12, I find the landlords have met the burden of proof and that the tenants are responsible for those costs which would not have been necessary had the tenants vacated in accordance with the original order of possession. Therefore, I grant the landlords \$120 for item 11 and \$867.72 for item 12, respectively.

Regarding items 11 and 13 through 19, I find the landlords have met the burden of proof and that the tenants' breached section 37 of the *Act* which requires the tenants to leave the rental unit and garden in reasonably clean condition as per the tenancy agreement and the addendum which I find the tenants failed to do. I also find that the landlords have established the full amounts claimed for these portions of the landlords' claim.

Finally, regarding the interior painting costs of \$2,400.00, I do not apply depreciation to the landlords' claim as I agree with the landlords' undisputed testimony that the tenants purposely damaged areas of the walls and that the damage went beyond reasonable wear and tear. Therefore, I have not applied depreciated value as I find the damage caused by the tenants caused unnecessary painting by the landlords and that the tenants should bear the entire cost of \$2,400.00.

Based on the above, I am satisfied on the balance of probabilities and based on the undisputed evidence before me, that the landlords have proven their full monetary claim of **\$28,899.38**. As the

landlords' claim was fully successful, I grant the landlords **\$100.00** for the full recovery of the cost of their filing fee pursuant to section 72 of the *Act*.

Given the above, I find the landlords have established a total monetary claim of **\$28,999.38**. I grant the landlords a monetary order in the amount of \$28,999.38 pursuant to section 67 and 72 of the *Act* accordingly.

As the landlords have not applied against the tenants' security deposit, I will not address the security deposit in this decision.

Conclusion

The landlords' claim is fully successful.

The landlords have been granted a monetary order in the amount of \$28,999.38 as described above. The landlords must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: February 6, 2018

Residential Tenancy Branch