



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNR, MNSD, FF

Introduction

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

- a monetary order for unpaid rent, 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 tenant's 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 tenant 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;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord 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. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

The hearing was adjourned due to a lack of time. Both parties were cautioned that no new evidence was to be submitted, nor would it be accepted.

On June 21, 2018 the hearing was reconvened with both parties present.

Issue(s) to be Decided

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

Are the landlords entitled to retain all or part of the security deposit?

Are the tenants entitled to a monetary order for money owed or compensation for the loss of quiet enjoyment, return of the security deposit 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.

The landlords claim that this was a verbal agreement to a tenancy. The tenants claim that a signed tenancy agreement was made, but that the landlords failed to return a copy to the tenants. Both parties agreed that this tenancy began on April 1, 2013 on a month-to-month basis. The monthly rent was \$1,000.00 payable on the 1st day of each month. A security deposit of \$500.00 was paid. Both parties confirmed that no Pet Damage Deposit was paid. Both parties confirmed that neither a move-in or out condition inspection report(s) were completed.

The landlords seek a clarified monetary claim of \$5,772.53 which consists of:

\$3,771.22	Estimated cost to Replace Damaged Floors (Landlord averaging of two estimates, \$3,482.81 and \$4,059.33 @ 50% of both)
\$157.50	Estimated cost to replace missing floor moulding
\$175.00	General Cleaning
\$200.00	General Exterior Cleaning/Repairs
\$83.98	Outstanding Utilities, Hydro
\$126.02	Outstanding Utilities, Hydro
\$87.72	Outstanding Utilities, Cable

\$150.00	Repair of Damaged Fireplace
\$1,000.00	Overdue Rent, September 2017

The landlords claim that the tenant vacated the rental unit leaving it dirty and damaged. The landlords stated that excessive water damaged the flooring and that the floor was provided to the tenants in good condition. The tenants dispute this claim stating that within the first 6 months of the tenancy the landlords were notified that they had noticed “bubbling” on the floors and that the damaged flooring was caused by poor installation. The tenants also argued that the damaged floor was the result of “poor installation”. The tenants provided no supporting evidence that the landlords were notified of the “bubbling” or that the flooring was poorly installed. The landlords have submitted in support of this claim, copies of two estimates, one for a \$3,482.81 and the second for \$4,059.33 for both materials and labour with the average of the two equalling \$3,771.22. The landlords claim that the flooring was provided to the tenants in excellent condition as it was new at the beginning of the tenancy. Both invoice submissions note that excessive water damage was the cause of the damaged floor and in one case it was noted that the flooring was not repairable, but instead needed to be replaced. In support of this claim the landlord has submitted photographs of the rental unit prior to the start of the tenancy and more photographs of the rental unit at the end of tenancy.

The landlords seek the replacement cost of missing floor molding for a cost of \$157.50. The landlords claim that at the beginning of the tenancy flooring molding was provided with the rental premises and that there was missing floor molding found at the end of tenancy. The tenants dispute this claim stating that all the floor molding was present at the end of tenancy and referred to the tenants’ submitted photographs and video. The landlords submitted in support of this claim photograph(s) of the tenancy at the beginning of tenancy in comparison with photographs at the end of tenancy. The landlords also submitted a copy of an estimate dated September 19, 2017 for floor molding costing \$157.50.

The landlords seek a claim for cleaning of \$175.00 as the tenants vacated the rental unit leaving it dirty requiring cleaning with both bathrooms with plugged drains and the dirty areas: the windows, under the appliances and a dirty oven. The tenants argued that he had hired a professional cleaning service and has submitted a receipt in support of this claim. The landlord has submitted in support of this claim photographs showing the named areas and also referred to the video provided by the tenants which confirm the landlords’ claims. The landlord also provided a copy of a handwritten receipt for cleaning services totalling \$175.00 along with a typed letter detailing the type of

services and the amount of time for each. The tenants have also submitted photographs of the rental premises after it was cleaned.

The landlords seek compensation for \$200.00 in exterior cleaning costs. The landlords claim that the window frames were damaged due to the tenants pet and that the patio deck required pressure washing. The landlord has submitted in support of this claim a typed letter dated September 21, 2017 for window frame staining, pressure washing the patio deck, re-seeding the lawn from hot tub, removing excess soil and leveling ground. The tenants dispute this claim stating that notice of any issues were never brought to their attention and that the upstairs tenant caused the damage. The tenants have submitted in support of this claim 7 photographs of the upstairs tenant with a truck and trailer, using machinery and driving in the yard.

The landlords seek unpaid utilities totalling, \$210.00 based upon two Hydro invoices for \$83.98 and \$126.02. The tenants dispute this claim stating that this was a result of issues with the upstairs tenant's usage as they had 4 persons residing instead of 3. Neither party disputed the submitted copies of the utility invoices. The landlords argued that the upstairs tenants pay 75% of the utilities and that there are no extra people residing there.

The landlords seek compensation of \$87.72 for cable cost(s). The landlords claim that tenants failed to pay an outstanding bill dated September 16, 2017 in which the final bill was for \$87.72 for September 6, 2017. The tenants dispute this claim stating that there was a verbal agreement to include the cable with rent and that the tenants always paid an additional \$60.00 in cash.

The landlord seeks compensation of \$150.00 for a damaged fireplace. The landlord claims that at end of tenancy it was noted that epoxy was found on the fireplace which shows the removal of the finish on the fireplace. The landlord relies upon the submitted photograph #16. The tenants dispute this claim stating that video 1.1.1 contradicts the landlord's photograph.

The landlord also seeks \$1,000.00 for unpaid rent for September 2017. The landlord claims that tenants failed to provide proper notice to end the tenancy and was not notified until August 28, 2017 to end the tenancy until September 15, 2017. The tenants dispute this stating that notice was given to the landlord on July 30, 2017 and then again on August 3, 2017. The tenants were unable to provide sufficient evidence of notice. The tenants argued that verbal notice was given to the landlord on August 3,

2017 to end the tenancy on September 15, 2017. The landlord also claims that due to the short period of time, efforts to re-rent the premises were unsuccessful.

The tenants seek a monetary claim of \$4,500.00 which consists of:

\$4,000.00	Rent Abatement
\$500.00	Return of Security Deposit
\$100.00	Recovery of Filing Fee

The tenants seek a rent abatement of \$4,000.00 for a 4 ½ month period (May, June, July and August 2017) for the loss of quiet enjoyment and privacy. The tenants claim that the upstairs tenants were partying, disruptive behaviour and their privacy was invaded by the upstairs tenants. The tenants stated that the rental premises as a result were “not livable”. The landlord argued that no formal complaints were ever made by the tenants. The tenants argued that a text message was sent to the landlord regarding noise and a party, followed by a letter on July 14, 2017. A review of this letter reveals mention of concerns on noise. Specifically it mentions verbal noise complaints by both the neighbors and the downstairs tenants. The tenants also state that a text message by the landlord on May 7, 2017 confirming him witnessing the “partying” himself was an issue and again on August 21, 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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the affirmed testimony of both parties and find on a balance of probabilities that I prefer the evidence of the landlords over those of the tenants. In the first item of claim regarding the damaged flooring, I find that the tenants damaged the flooring due to neglect. Although both parties failed to complete a condition inspection report for the

move-in or the move-out, I accept the landlords' submitted photographs of the rental unit before and after the tenancy began. The tenants' argued the validity of the landlords' photographs, but was unable to provide sufficient evidence to support their claim that the photographs were not an accurate depiction of the flooring before and after the tenancy began. On this basis, I find that the landlords have established a claim for compensation for the damaged floors. The landlords provided two separate estimates and based their claim on the average of the two. The landlords are entitled to recovery of the average estimate of \$3,771.22.

On the landlords' second item of claim, \$157.50 for the cost of replacing missing floor moldings, I find on a balance of probabilities that I prefer the evidence of the landlords over that of the tenants. Although the tenants disputed the claim and provided photographs and a video in contrast to those submitted by the landlord, I found that the tenants' submissions to not allow for a clear comparison of the affected areas with missing floor molding. On this basis, I find that the tenants' evidence does not support the tenants' claims. As such, I find that the landlord has been successful for the claim of \$157.50 for the estimated cost for the floor moldings.

On the landlords' claim for cleaning costs of \$175.00, I find that I prefer the evidence of the landlords over that of the tenants. Although the tenants disputed the landlords' claims and provided an invoice for cleaning, photographs and videos of the condition of the rental space, the landlords' evidence is clear that the oven was left dirty. The tenants' evidence does not provide for a clear comparison of the claimed areas of the rental space. The tenants' own video does show that the oven was dirty. On this basis, I find that the landlord has provided sufficient evidence to satisfy me that the rental space was left dirty requiring cleaning.

The landlords claim for outside cleaning is dismissed. Although the landlord claims that the tenants caused the damage, the landlords have failed to provide sufficient evidence to support this claim. In contrast the tenants have provided photographs of the upstairs tenant using machinery and driving in the yard. On this basis, the landlords have failed to establish a claim.

I accept the undisputed affirmed testimony of both parties regarding the landlords' utilities claim totalling, \$210.00. Neither party disputed the validity of the submitted invoices. Although the tenants argued that there was an additional occupant in the upstairs rental space, both parties confirmed that the upstairs tenants were responsible for 74% and the tenants were responsible for the remaining 25% of the total utilities. On this basis, I find that I prefer the evidence of the landlords over that of the tenants. The landlords have established a claim for unpaid utilities.

On the landlord's claim for \$87.72, I find based upon the submitted invoice for cable that the landlord has established a claim for recovery of this cost. The date of the invoice clearly shows that it was for a period of time during the tenancy prior to the tenants vacating the premises. As such, the landlord has been successful in this portion of the claim.

The landlord's claim of \$150.00 for a damaged fireplace has failed. I find that the landlord has failed to provide sufficient evidence of an actual cost for the "damaged fireplace". No detail of an invoice/bill was provided. The landlord failed to provide conclusive evidence showing that damaged was caused by the tenants during the tenancy. As such, this portion of the landlord's claim is dismissed for lack of sufficient evidence.

On this last item of claim of \$1,000.00 for unpaid rent for September 2017, I find that the landlord has established a claim. Although the tenants argued that proper notice was given to the landlord, this was disputed by the landlord and the tenants were unable to provide sufficient evidence to support this claim. Both parties confirmed that the tenancy ended on November 15, 2017 and the landlord had made efforts to re-rent the premises without success. As such, I find on a balance of probabilities I prefer the evidence of the landlord over that of the tenants. The landlord has established a claim for unpaid rent/loss of \$1,000.00.

The landlord has established a total monetary claim of \$5,501.50 which also includes the landlord's successful recovery of the \$100.00 filing fee.

On the tenants' claim of \$4,000.00 in rent abatement due to the loss of quiet enjoyment and privacy, I find has failed. Although the landlord disputed this claim the tenants were successful in establishing that losses in quiet enjoyment did occur as a result of the upstairs tenants "partying" and "noise". The tenants claim is for \$4,000.00 which is equal to a 100% loss of use of the rental premises. During the hearing both parties confirmed that the tenants still resided in the rental space during this period of time. The tenants were unable to quantify the calculation of the \$1,000.00 per month in rent abatement or provide sufficient evidence of a loss of use equal to this amount. However, I do find that a loss of quiet enjoyment did occur and on this basis, I grant the tenants a nominal monetary award for \$600.00 (equal to \$150.00 per month).

The tenants have established a total monetary claim of \$1,200.00 which includes the tenants' recovery of their \$100.00 filing fee.

In offsetting these claims, I find that the landlord is granted a monetary order for \$4,301.50 (\$5,501.50-\$1,200.00).

Conclusion

The landlord is granted a monetary order for \$4,301.50.

This order must be served upon the tenants. Should the tenants 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: July 10, 2018

Residential Tenancy Branch