



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: MNR, MND, MNSD, FF
TENANTS: MNDC, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking compensation for unpaid rent or lost rental income, for compensation for damage to the unit, site or property, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on June 16, 2018, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by registered mail on or about April 28, 2018, in accordance with section 89 of the Act.

Both parties confirmed receiving the other parties hearing packages. .

Issues to be Decided

Landlord:

1. Is there unpaid rent or lost rental income and if so how much?
2. Is the Landlord entitled to compensation for unpaid rent or lost rental income and if so how much?
3. Is there damage to the unit, site or property and is the Landlord entitled to compensation for the damage?
4. Is the Landlord entitled to retain the Tenants' security deposit?

Tenant:

1. Are there damages or losses to the Tenants and if so how much?
2. Are the Tenants entitled to compensation for loss or damage and if so how much?

Background and Evidence

This tenancy agreement started in February, 2013. The existing tenancy agreement is for a fixed term from September 1, 2017 to August 31, 2018. Rent is \$1,550.00 per month payable on the 1st day of each month. The Tenants paid a security deposit of \$600.00 at the start of the tenancy. A move in condition inspection report was completed on February 1, 2013 and a move out condition inspection report was completed on June 2, 2018.

The Tenants' Agent said there was a flood in the rental unit on October 16, 2017 which resulted in the unit being renovated to repair the damage and to prevent potential mold issues that accompany flood damage. The Tenants' Agent said the unit was not acceptable to live in from October 16, 2017 to December 13, 2017 due to the flood damage, restoration and construction repairs. The Agent continued to say that from October 16, 2017 into November 2017 the unit had the heat turned up to 30 to 37 degrees and there were dehumidifiers in the unit. These conditions were not acceptable to the Tenant so on November 29, 2017 the Tenant and the Landlord agreed that the Tenant could move into alternative housing until the construction was completed. The Tenants' Agent said the Tenant moved back into the rental unit on December 13, 2017.

The Tenants' Agent continued to say that after December 13, 2017 there was additional work done in the unit when the Tenant was away for a week. The Agent said that the

Tenant came back and did some cleaning and then after that the unit was uncomfortable and caused the Tenant some health issues. The Agent submitted photos of the Tenant having allergic reactions to the dust and construction in the unit. The Tenant did not submit any medical evidence to support this. The Agent continued to say that he Tenant was unhappy with the unit as he believed the unit was the cause of his health issues so the Tenant gave Notice to end the tenancy in writing on April 26, 2018 for May 31, 2018. The Tenant forwarded a Mutual Agreement to End Tenancy to the Landlord based on the conditions in the unit as a result of the renovations. The Tenant believes the flood and the renovations were the cause of his health issues. The Landlord did not agree to the mutual agreement to end tenancy. The Agent said the Tenant moved out of the unit May 31, 2018 and the move out inspections report was completed on June 2, 2018. Further the Agent said the Tenant's health issues resolved themselves in a short period of time after he moved out of the rental unit.

As a result of this situation the Tenant has applied for the following monetary compensation. The Agent said the Tenant had alternative accommodation from November 29 to December 13, 2017 at a cost of \$583.84 and \$390.00. The Agent said they submitted an invoice for the \$583.84 accommodation, but they do not have an invoice for the \$390.00 stay at an Air B & B. The Tenant is claiming \$973.84 for alternative accommodation while the renovations were being done.

Further the Agent said that the tenancy was devalued during the period of October 16, 2017 to November 29, 2017 because of the flood, the restoration and the construction. The Tenants' Agent said they are requesting a refund of rent for that time period of \$2,338.00 which represents the full amount of rent paid during that period.

In addition the Tenants' agent said the Tenants did 10 hours of cleaning during the construction and renovations period and the Tenants are claiming 10 hours of cleaning at \$15.00 per hour for a total cleaning claim of \$150.00.

The Agent also said the Tenants are requesting the recovery of the filing fee of \$100.00 from the Landlord.

The Landlord said this is a fixed term tenancy and the Tenant gave improper Notice to end the tenancy so the Tenant should be responsible for the rent until the tenancy ends on August 31, 2018. The Landlord said he is claiming \$1,550.00 for each month of June, July and August 2018 in the total amount of \$4,650.00.

Further the Landlord said the Tenants painted part of the unit a different colour and the agreement was that the unit would be painted back to the same colour at the end the tenancy. The Landlord said this did not happen so the Landlord is claiming \$600.00 to repaint the part of the unit which is colour mismatched. The Landlord said the unit has not been painted yet but he submitted a quote of \$600.00 to do the work.

The Landlord continued to say he is also claiming for some damage to the unit. First a tap in the bathroom is damaged and the Landlord estimates the cost to repair the tap is \$50.00. In addition the Landlord said the Tenant had an exercise device on the bedroom door which has dented the door and frame. The Landlord said he believes it will cost \$150.00 to repair this damage.

The Landlord said his total claim is for \$5,450.00 plus the filing fee of \$100.00.

The Tenants' Agent said in response to the Landlord's application that the Landlord has not tried to rent the unit as he only advertised it for a few weeks and he put the rent up to \$1,700.00. The Agent said she does not believe the Landlord's unit is worth \$1,700.00 and so it is not competitive with other units in the area. The Landlord said they increased the rent because of the renovations that were done and he has advertised it on Craigslist and one other site. The Landlord said he submitted 4 comparable rentals in the area to show the rent of \$1,700.00 is the going rate and the Landlord said he has showed the unit 4 times but has not been successful in renting yet.

The Tenant's Agent continued to say that the tenancy was for 5 years and the economic life of interior paint for a rental unit is deemed as 4 years in the RTB policy guidelines. In addition the tenancy agreement says the Tenant can paint the unit a neutral colour. The Agent said the Tenant used white paint. The Landlord responded by saying the agreement was that the Tenant would paint the unit back to its original colour. The Landlord said the Tenant did not paint the unit back to the original colour so he has to pay to have it done. The Landlord said this is a reasonable claim. The Tenants' Agent said there was no agreement to repaint the unit.

The Tenant continued to say that the damage to the unit of the tap and door are both wear and tear and are the Landlord's responsibility. Further the Landlord did not repair them or submit invoices. The Landlord said he has not repaired the damage as he wanted to complete the hearing first.

The Landlord said he made an agreement with the Tenant's father to pay the Tenant \$711.48 for alternative accommodation and the Landlord said he is still willing to do that. The Landlord continued to say the Tenant has not proven the cost of accommodation because he did not submit a receipt for the \$390.00 claim.

Further the Landlord said the Tenant had possession of the rental unit from Oct 18, 2017 (the day he believes the flood happened) to December 13, 2017 the end of construction, so the Landlord does not agree with refunding any rent to the Tenant for this period of time.

In addition the Landlord said the Tenant's cleaning claim of \$150.00 should have been the responsibility of the renovations company, so the Landlord does not believe he is responsible for the Tenant cleaning costs.

The Landlord said in closing that the relationship was very strained at the end of the tenancy, the water damage was not a flood but a bit of water on the floor of the rental unit. The renovations were done out of the abundance of care recommended by the insurance company and he believes the Tenant should not profit because of the applications.

The Tenants' Agent said in closing that the Landlord is running a business and he did not provide the product that the Tenant was renting. The rental unit was not livable from October 16 to December 13, 2017 therefore the Tenant should be compensated.

Analysis

Section 45 of the Act says (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than **the date specified in the tenancy agreement as the end of the tenancy**, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 7(2) of the Act says a Landlord has to try to mitigate or minimize any loss or damage that they may be incurring.

I accept the testimony and evidence of the Landlord that this tenancy was a fixed term tenancy with an expiry date of August 31, 2018. Further I accept that the Tenant gave improper notice the Landlord on April 26, 2018, because the tenancy could not be ended until August 31, 2018 the expiry date of the fixed term.

Further it is the Landlord's responsibility to mitigate any loss by renting the unit as soon as possible. Although the Landlord has indicated he has tried to rent the unit and has advertised it. I find on the balance of possibilities and the testimony of the Tenants' Agent that the increased rental rate to \$1,700.00 has hindered the renting of the unit. Consequently, I award lost rental income to the Landlord for June and for ½ of July 2018 in the total amount of \$2,325.00.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

With regard to the Landlord's claims for the tap replacement and the door repairs these claims have not been supported by paid invoices therefore I dismiss the damage claims of \$200.00 with leave to reapply.

Further Residential Tenancy Branch Policy Guideline #40 Useful life of Building Elements states the economic life of interior paint is 4 years. As this tenancy lasted 5 years the Landlord's claim to make the Tenants responsible for painting the rental unit whether it was a different color or not is dismissed without leave to reapply. I find painting the unit is the responsibility of the Landlord.

Section 32 of the Act says: (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and
(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Further if a tenancy is interrupted or the unit is devalued because of repairs or renovations the Landlord is responsible to compensate the Tenant or find alternative accommodations while the construction or repairs are happening.

As the Tenant did not submit invoices for both alternative accommodations and the Landlord said he had made an agreement for compensation for accommodations for the Tenant of \$711.48 with the Tenants' father who was acting as an agent for the Tenants. I accept the amount of compensation of \$711.48 as settlement for compensation for alternative accommodations from November 29, to December 13, 2017 for the Tenants. I award the Tenants \$711.48.

Further I accept the Tenants' Agents testimony and evidence that the rental unit was compromised from October 16, 2017 to November 29, 2017 and the tenancy was devalued. I also accept the Landlords testimony that the Tenant still had use of the rental unit so a full rent refund may not reflect the amount the tenancy was devalued. I find the inconvenience of the clean up of the water damage, the drying of the unit and the renovations from October 16, 2017 to November 29, 2017 devalued the tenancy by 50%. I award the Tenants compensation of \$1,169.00 ($\$2,338.00 / 2 = \$1,169.00$) as settlement of the devaluation of the tenancy due to water damage and renovation work.

Further as the Tenants did not provide corroborative evidence for their claim of \$150.00 for cleaning, I dismiss this claim with leave to reapply.

Consequently both applications have been partially successful and will offset each other as follows:

Landlord's award:

Lost rental income for June and ½ of July 2018	\$ 2,325.00	
Subtotal		\$2,325.00
Tenants' award		
Compensation for Alternative Accommodation	\$ 711.48	
Devaluation of the tenancy due to water and renovations	\$ 1,169.00	
Subtotal		<u>\$1,880.48</u>
Balance owing to the Landlord		<u>\$ 444.52</u>
Less the Security Deposit		<u>\$ 600.00</u>
Balance owing the Tenant		<u>\$ 155.48</u>

As the Tenants and the Landlord were both only partially successful in these matters, I order both parties to bear the cost of the \$100.00 filing fee for these proceedings.

Conclusion

I order the Landlord to retain \$444.52 of the Tenants security deposit as full settlement of the Landlord's application.

I order the Landlord to return \$155.48 of the Tenants' security deposit as full settlement of the Tenants' application.

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 03, 2018

Residential Tenancy Branch