Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

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

- a monetary order 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 tenants' 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 tenants pursuant to section 72.

The tenants applied for:

- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the Act;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the landlords' notice of hearing package and the submitted documentary evidence. Both parties confirmed that the tenants served the landlords with the tenants' notice of hearing package. The tenants stated that the landlords were served with the tenant's documentary evidence in the same notice of hearing package. A review of the two missing document packages are for an incomplete copy of the signed tenancy agreement dated December 3, 2016, an incomplete copy of a completed condition inspection report for the move-in dated

December 3, 2016, a complete signed and undated copy of a condition inspection report for the move-out. Neither party raised any issues with service.

I accept the undisputed affirmed testimony of both parties and find that both parties have been sufficiently served with the notice of hearing package(s) and the submitted documentary evidence to allow them to participate, make submissions and respond to the claims of the other party. Both parties are deemed sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for damage, for money owed or compensation for damage or loss and recovery of the filing fee?
Are the landlords entitled to retain all or part of the security deposit?
Are the tenants entitled to return of double the security and pet damage deposits?

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 applicant's claim and my findings are set out below.

This tenancy originally began on December 1, 2016 on a fixed term ending on May 31, 2017 as per the submitted copy of the signed tenancy agreement dated December 3, 2016. The monthly rent was $1,100.00 payable on the 1st day of each month. A $550.00 security and a $550.00 pet damage deposit(s) were paid on December 3, 2016.

Subsequently a new signed tenancy agreement was made starting on June 1, 2017 on a month-to-month basis in which the monthly rent was $1,100.00 payable on the 1st day of each month as per the submitted copy of the signed tenancy agreement dated May 31, 2017. An agreed upon addendum signed and dated May 31, 2017 regarding utilities states:

> *The tenants and the landlords will **share the electricity and natural gas expense on square foot basis.***
> *The tenant's share will be based on the suites **839 square feet** divided by the total house square footage of 3,617 square feet multiplied by the cost of the electricity and natural gas.*

*The landlords agree to notify the tenants in writing of the amount owing which is to be **paid by the 30th of each subsequent month**.*
When the tenancy ends, the tenants agree that if they do not pay their portion of the utilities for the last month, their portion will be taken out of the damage deposit.

The landlords seek a monetary claim of $9,400.26 which consists of:

$1,000.00	Insurance Deductible for All Repairs
$1,602.93	Emergency Repairs
$5,446.94	Estimate for Remaining Repairs
$1,100.00	Loss of Rent, December 2017
$21.47	Unpaid Utilities, Gas, Nov 1-30
$69.60	Unpaid Utilities, Hydro, Oct 6-Nov 6
$59.32	Unpaid Utilities, Hydro, Nov 7-30
$100.00	Filing Fee

The landlords claim that the tenants caused damage to the flooring through their washing machine. The landlords claim that water damage to the rental space was caused by the tenants' washing machine. Both parties agreed that a water leak occurred and that as a result the tenancy ended on November 30, 2017. The landlords claim that the damage was so extensive that emergency repairs, followed by repairs to the unit made it un-rentable and that a loss of rental income had occurred for December 2017. The landlords have submitted photographs of the damaged flooring which shows the floor "lifting up" from moisture damage. Both parties agreed that the insurance claim reports show that the matching the existing flooring was not possible and that the entire floor had to be replaced.

The landlords claim that emergency repairs were carried out by a contractor at a cost of $1,602.93 for which a $1,000.00 insurance deductible incurred from the landlords' insurance. The landlords claim both amounts to allow the landlord to cancel their insurance claim made and return the coverage price to the prior claim amount. The landlords claim that a further repairs costing $5,446.94 are needed based upon the contractors' estimate. The landlords have submitted a copy of an email by a third party (insurance adjuster) who claims that the tenants advised her that the source of the water leak originated from the hot water feed to the tenants' washing machine.

The landlords claim that because of the extensive water damage caused by the tenants, the rental space was un-habitable and un-rentable which caused the landlords the loss

of rental income of $1,100.00 for December 2017. The landlords stated that although they did not attempt to re-rent the space (advertise), it was un-rentable and that the flooring was not replaced until the end of December 2017.

The landlords also seeks recovery of utilities (Gas (November 10-30 of $21.47) and Hydro (October 6- November 30 of $69.60 + $59.32)) which were unpaid by the tenants and are calculated based upon the agreed terms for the utilities in the signed and dated addendum.

In support of these claims the landlord has submitted:

Copies of 11 photographs of the view of damage(s)
A copy of emails between landlords and insurance adjuster, re: cause of water leak
A copy of the signed tenancy agreement dated December 3, 2016 and addendum
A copy of the completed condition inspection report, move-in dated December 3, 2016
A copy of the signed tenancy agreement dated May 31, 2017 and addendum
A copy of the signed condition inspection report for the move-out
Copies of Utility invoice(s), Gas and Hydro
Copies of the landlords' insurance email communications and insurance claim

The tenants dispute the landlords claims stating that the only affected (water damage) area were confined to a 3X3 area around the laundry nook. The tenants argued that because the contractor/insurance was unable to match the existing flooring, it had to be all replaced and the tenants feel that they should not be responsible. The tenants confirmed that water leaked from the washer connection hose, but claim that the leak could have been caused by rocks backing up the water in the hose. The tenants were unable to provide sufficient evidence to support this claim. The tenants' dispute the landlords claim for loss of rental income as the rental space was rentable and could have been shown while awaiting repairs. The tenants conceded the landlords' utility claims for Gas ($21.47) and Hydro ($69.60 and $59.32).

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.

In this case, I accept the undisputed affirmed testimony of the landlords and tenants and find that the landlords have established a claim for recovery of damage(s) and compensation for the following:

$1,000.00	Insurance Deductible for All Repairs
$1,602.93	Emergency Repairs
$5,446.94	Estimate for Remaining Repairs
$21.47	Unpaid Utilities, Gas, Nov 1-30
$69.60	Unpaid Utilities, Hydro, Oct 6-Nov 6
$59.32	Unpaid Utilities, Hydro, Nov 7-30
$100.00	Filing Fee

The landlords have provided sufficient evidence that water damage occurred due to the tenants' washing machine. The tenants confirmed that a water leak occurred from the tenants' washing machine via the water hose hookup. Although the tenants claimed an alternative theory for the cause that it was the result of rocks in the water line, no evidence to support this claim has been provided. The water damage was caused by the tenants' washing machine and water hose which were installed by the tenants. On this basis, I find that the landlords have established a claim for recovery of their $1,000.00 insurance deductible, emergency repair cost of $1,602.93 to return them to an insurance coverage cost (cancellation of the insurance claim) prior to the water leak and the remaining costs for $5,446.94 damage repairs.

Residential Tenancy Branch Policy Guideline #5, Duty to Minimize Loss states in part,

> *Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss[1]. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.*

The landlords' claim for loss of rental income of $1,100.00 for December 2017, I find has failed. This portion of the landlords' claim was disputed and it was revealed that the landlords failed to mitigate any possible losses by attempting to re-rent (advertise) the rental space. The landlords were adamant that the rental space was un-rentable, but have failed to provide sufficient evidence to support this. Both parties agreed that although there was water damage, it was confined to the immediate area around the laundry nook hallway. The landlords claimed that the entire basement flooring was replaced, but failed to provide sufficient evidence of how the rental space was not showable to be rented. On this basis, the landlord's claim for loss of rent, December 2017 is dismissed.

The landlords have also established a claim for recovery of utility costs as claimed for $21.47(Gas), $69.60 and $59.32 (Hydro) as these claims have been conceded by the tenants as owing at the end of tenancy.

The landlords have established a total monetary claim of $8,300.26.

In this case, both parties confirmed that the tenancy ended on November 30, 2017 and that although written notification was not given to the landlord, the landlord received the tenants' forwarding address in writing on December 1, 2017 via email. I find that the tenants are entitled to return of the original $550.00 security deposit, but not compensation under section 38(6) of the Act. The landlords had applied (December 10, 2017) within the allowed timeframe (15 days) upon receiving the tenants' forwarding address in writing on December 1, 2017.

Section 38 (7) of the Act states that if a landlord is entitled to retain an amount under subsections (3) or (4) a pet damage deposit may be used only for damage caused by a pet to the residential property unless the tenant agrees otherwise.
The landlords are subject to section 38 (7) in that none of the damage caused was caused by a pet. In this case, both parties acknowledged that no damage was caused by a pet and as such, the landlords should have returned the pet deposit within the

allowed 15 day period. As such, section 38 (6) applies to the $550.00 pet damage deposit. The landlord is liable to pay an amount equal to the $550.00 pet damage deposit. The tenants are entitled to return of double the pet damage deposit for a total of $1,100.00.

Further, I note that section 20 (E) of the Act states that a landlord may not require, or include as a term of a tenancy agreement, that the landlord automatically keep all or part of the security or pet damage deposit at the end of the tenancy agreement. The landlords' addendum condition regarding the security and pet damage deposits are unenforceable.

The tenants have established a total monetary claim of $1,650.00 and recovery of the $100.00 filing fee.

In offsetting these claims, I grant the landlord a monetary order for $6,550.26.

Conclusion

The landlords are granted a monetary order for $6,550.26.

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 31, 2018

Residential Tenancy Branch