



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Landlord A.K. (the "landlord") testified that tenant T.L. (the "tenant") was served the notice of dispute resolution package in person on February 15, 2018. The tenant confirmed receipt of the dispute resolution package on February 15, 2018. I find that the tenant was served with this package on February 15, 2018, in accordance with section 89 of the *Act*. While tenant G.T. was not served in accordance with section 89 of the *Act*, I find that tenant G.T. was sufficiently served, pursuant to section 71 of the *Act*, for the purposes of the *Act* because the tenant testified that tenant G.T. is her husband and reviewed the dispute resolution package.

At the beginning of the hearing the tenant testified that her last name listed on the application for dispute resolution is her married name, but that legally her last name is still her maiden name. Pursuant to section 64 of the *Act*, I amended the application to state the tenant's legal name.

Issue(s) to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent pursuant to sections 26 and 67 of the *Act*?
2. Are the landlords entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
4. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on October 1, 2016 and ended in August of 2017. Monthly rent in the amount of \$2,000.00 was payable on the first day of each month. A security deposit of \$1,000.00 was paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that the tenants moved out on August 8, 2017 and left the subject rental property extremely dirty. The landlord testified that the landlords spent hours cleaning the property and that they hired others to clean the property according to the following table:

Cleaner	Hours	Amount
Professional cleaner	Unknown	\$157.50
Neighbour	6	\$150.00
Landlord R.K.	4	\$100.00
Landlord A.K.	13	\$325.00
Total		\$732.50

The landlords submitted into evidence photographs of the subject property showing dirt and grime the tenants did not clean when they moved out of the subject rental property. In support of the claim for cleaning paid to the professional cleaner and the neighbour, the landlords submitted into evidence e-mails showing interac e-transfers to two people in the amount of \$157.50 and \$150.00 respectively.

The tenant testified that she moved out of the subject rental property on August 2, 2018 and that she cleaned the subject rental property before moving out. The tenant testified that the subject rental property was not as dirty as the landlords allege and that she had a cleaning lady come to her home once per week and that for the last three weeks she didn't have a dog at the subject rental property.

Both parties agree that a condition move in inspection and inspection report was completed on November 6, 2016. This report was entered into evidence.

The landlord testified that she texted the tenant three times to arrange a time to complete the move out inspection and inspection report but that the tenant refused to meet up to do the inspection and inspection report. The tenant testified that the landlord only texted her on one occasion to arrange a time to complete the move out inspection and inspection report but that the time she suggested did not work for the tenants. The text messages were not entered into evidence.

The landlord testified that they completed the move out condition inspection and inspection report without the tenants on August 8, 2017. The move out inspection report was entered into evidence. The move-in inspection report states that the property is clean and the move out condition inspection report states that the property is very dirty. The tenant testified that they never provided the landlords with their forwarding address in writing.

Both parties agreed that the addendum to the tenancy agreement states that the tenants are responsible for maintaining the landscaping. The landlord testified that he had a spare lawn mower and allowed the

tenant to use it to move the lawn. The landlord testified that when the tenant moved out the grass had not been cut in weeks and that there was dog poo all over the yard. The landlord testified that they had to cut the grass and hire a person to take the bags of cut grass to the dump which cost \$110.00. In support of this the landlord entered into evidence an e-mail showing an interac e-transfer to a person in the amount of \$140.00.

The landlord testified that they originally asked the person who was doing the dump runs for a quote for the grass clippings and he said \$110.00. Then the landlords asked how much extra it would be to take a few other items to the dump for them and person they hired told them it would be \$30.00 extra for the extra items.

The tenant testified that while it was her responsibility to cut the grass and maintain the yard that the lawnmower stopped working several weeks before she moved out so she was unable to mow the lawn. The tenant also testified that the landlords told her not to bother cutting the grass because they were going to hire a professional landscaper. The landlords denied making this statement.

Both parties agree that the tenants were responsible for paying the water bills for the subject rental property while the tenants resided at the subject property. The landlords entered into evidence two water bills from the city: one in the amount of \$153.30 for January 1- March 31, 2017 and the second in the amount of \$176.26 for April 1 – June 30, 2017. The tenant agreed that she owes the landlords the amount set out in each invoice.

Both parties agreed that this tenancy ended by way of a Two Month Notice to End Tenancy for Landlord's Use of Property with an effective date of July 31, 2017 (the "Two Month"). Both parties agree that the reason for ending the tenancy on the Two Month notice was for renovation or repair. Both parties agreed that the tenants were permitted to have one month of free rent and that the landlord agreed that the tenants could have either June 2017 rent free of charge or the July 2017 rent free of charge. Both parties agreed that the tenants did not pay any rent for June, July or August. The Two Month Notice was not entered into evidence.

The landlord is claiming rent for June 2017 in the amount of \$2,000.00 and a pro-rated rent for eight days in August in the amount of \$516.00, that the landlord testified the tenants overhauled the subject rental property.

The tenant testified that the landlords should have served them with a Four Month Notice to End Tenancy (the "Four Month Notice") instead of the Two Month Notice, and that under the Four Month Notice, she would have been entitled to two months free rent. The tenant testified that they did not pay June or July's rent because they thought they were entitled to two months' free rent. The tenant testified that she moved out of the property on August 2, not August 8, 2017 and shouldn't have to pay any extra for staying until August 2, 2017.

Analysis

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord and the landlord's testimony, I find that the rental unit required cleaning when the tenants moved out. The landlords submitted e-mails showing interac e-transfers to two individuals in the amount of \$157.50 and \$150.00 which the landlord's testified they paid to a professional cleaner and neighbor respectively. The landlord did not submit any receipts into evidence or any statements from the persons they testified they hired to clean the subject rental property.

I find that without the receipts for the above charges, and or statements from the parties hired to complete the work, the landlords have failed to meet their burden of proof as to the quantification of their damages and so cannot be successful in this claim. The e-mails showing interac e-transfers are not enough to prove the quantification of damages as the transfers could be for a wide variety of things not directly linked to the cleaning claims.

The landlord testified that she spent 13 hours cleaning the property and that landlord R.K. spent 4 hours cleaning the property. The landlords are seeking to recover \$25.00 per hour for the time they spent cleaning. I accept the testimony of the landlords and find that they are entitled receive compensation as per the below table:

Cleaner	Hours	Rate	Amount
Landlord R.K.	4	\$25.00	\$100.00
Landlord A.K.	13	\$25.00	\$325.00
Total			\$425.00

Based on the photographic evidence of the landlord, the tenancy agreement and the testimony of both parties, I find that the tenants were responsible for cutting the grass and that they failed to do so. I find that the landlord was not obligated to provide the lawn mower and that it remained the tenant's obligation to cut the grass even when the lawn mower broke down. The landlord is claiming \$110.00 for the cost of sending bags of grass to the dump.

The landlord did not submit any receipts into evidence or any statements from the person they testified they hired to haul the grass to the dump. I find that without the receipts for the above charges, and or statements from the party hired to complete the work, the landlords have failed to meet his burden of proof as to the quantification of this damage. The interac money transfers alone, are not enough to prove damages as they could be for a wide variety of things not directly linked to the claim for trips to the dump. However, I am satisfied that the landlords suffered a loss as a result of the tenants not maintaining the landscape. Pursuant to Policy Guideline 16, I find that the landlords are entitled to nominal damages in the amount of \$50.00 for the unkept lawn.

Pursuant to the testimony of both parties, I find that the tenants are obligated to pay the following outstanding water bills:

- January 1- March 31, 2017: \$153.30
- April 1 – June 30, 2017: \$176.26.

Section 49(6) states that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Section 51 of the *Act* states that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord an amount that is the equivalent of one month's rent payable under the tenancy agreement. Section 51 applies to both Two Month Notices to end Tenancy and Four Month Notices to End Tenancy. I find that the tenants received a notice to end tenancy under section 49 of the *Act* and were therefore entitled to receive one month's free rent. The triggering event which entitles the tenants to receive one month's free rent is receiving the Two Month Notice. The tenants are not entitled to receive two month's free rent. I find that the tenants are required to pay June 2017's rent in the amount of \$2,000.00.

The testimony of the parties regarding the move out date is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the landlord has not met the required burden of proof to establish that the tenant moved out on August 8, 2017. Therefore, I find that the tenant only owes the landlords rent for August 1-2, 2017 as per the below calculation:

$$\begin{aligned} \$2,000.00 \text{ (rent)} / 30 \text{ (days in August)} &= \$66.67 \text{ per day} \\ 2 \text{ (days tenants residing at subject rental property)} \times \$66.67 &= \$133.34 \end{aligned}$$

Section 39 of the *Act* states that despite any other provision of this *Act*, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit or the pet damage deposit, or both, and the right of the tenant to the return of the security deposit is extinguished. I find that it has been more than one year since the end of this tenancy and that the tenants have not yet provided their forwarding address to the landlords in writing. Therefore, I find that the landlord is entitled to keep the tenants' security deposit in the amount of \$1,000.00.

As the landlords are successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
Landlord A.K. cleaning	\$325.00
Landlord R.K. cleaning	\$100.00
Water bill- Jan 1- March 31, 2017	\$153.30
Water bill- April 1 – June 30, 2017	\$176.26
Nominal damages- lawn	\$50.00
June 2017 rent	\$2,000.00
August 1-2, 2017 pro-rated rent	\$133.34
Filing fee	\$100.00
Less security deposit	-\$1,000.00
TOTAL	\$2,037.90

The landlords are provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this 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: September 17, 2018

Residential Tenancy Branch