



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL -S, MNDCL -S, FFL

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent and other damages or loss, as amended.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The hearing was held over two dates and an Interim Decision was issued following the first hearing date. As seen in the Interim Decision, I had ordered the landlord to re-serve the landlord's evidence package to the tenants. At the outset of the reconvened hearing, I confirmed that the landlord complied with my order and the tenant was in receipt of all of the documents in the landlord's evidence package. However, the tenant submitted that one of the documents included in the landlord's evidence package had been altered, as described below.

The tenant described the altered document as being the move-in inspection report on page 8 of the landlord's evidence package; however, the property manager pointed out that page 8 is the last page of the tenancy agreement. The tenant confirmed that he was referring to the last page of the tenancy agreement. As for the alteration, the tenant stated that the last page of the tenancy agreement had included hand-written notations written by the landlord when the tenants took possession of the rental unit but that the landlord removed the handwritten notations on the page submitted as evidence. I asked the tenant whether he had the page with the landlord's hand written notations, and he stated he had found it very recently but that he did not have time to upload the document for my review. I asked the tenant if he had the document in front of him at the time of the hearing so that he may read the hand-written notations aloud to which the tenant stated he did not have the document with him at the time of the hearing. I

permitted the tenant to describe the notations to the best of his recollection and gave the landlord the opportunity to respond. For reasons provided in this decision, I determined that the alleged hand-written notations are not relevant to this case and I found it unnecessary to order the tenant to provide his copy of the document.

On another procedural note, the tenant pointed out that the landlords did not take into account the security deposit in making their claims and they continue to hold the security deposit. I informed the parties that I would take into account that the landlords are holding a security deposit and that I will make a decision on its disposition in this decision. Neither party had any objection and I amended the landlord's application accordingly.

Issue(s) to be Decided

1. Are the landlords entitled to compensation for unpaid rent and other damages, as amended?
2. Are the landlords authorized to retain the tenants' security deposit?

Background and Evidence

The tenancy started on August 15, 2017 on a month to month basis. The tenants paid a security deposit of \$675.00. A pet damage deposit was not paid or collected. The rent was initially set at \$1,350.00 and increased to \$1,400.00 during the tenancy. Rent was due on the 15th day of every month.

The tenant and the owner performed a move-in inspection and a move-in inspection report was prepared and signed by both parties.

On May 13, 2019 there was a fire in the oven of the rental unit. The tenants did not pay the rent that was due on May 15, 2019. On May 28, 2019 the property manager issued a 10 Day Notice to End Tenancy for Unpaid Rent to the tenants, along with a letter. In the letter, the property manager informed the tenants that the owners had authorized a deduction of \$250.00 from the rent payable due to the fire in the oven and that the net amount of \$1,150.00 was payable. The tenants did not pay any portion of May's rent.

On June 3, 2019, the tenants filed an Application for Dispute Resolution to dispute the 10 Day Notice and to seek monetary compensation from the landlords for losses related to the oven fire, including alternative accommodation for 12 days (file number referenced on cover page of this decision). A hearing was held on July 18, 2019. In the

decision issued for that proceeding, the Arbitrator recorded that parties were in agreement that the tenants had vacated the rental unit on July 15, 2019 and an Order of Possession was not provided since the landlord had already regained possession of the rental unit by the date of that hearing. The tenant's monetary claim against the landlord was heard and dismissed by the Arbitrator.

In the proceeding before me, the property manager testified that he had initially scheduled a move-out inspection with the tenant for July 15, 2019 but that the tenant requested it be delayed until July 16, 2019, which the property manager agreed to do. The property manager testified that he went to the property at 9:30 a.m. on July 16, 2019, received the keys from the tenant, took photographs of the rental unit and then started completing the move-out inspection report but then the tenant left approximately 20 minutes later and refused to sign stay until the report was completed or sign the move-out inspection report.

The tenant testified that the property manager attended the property in the morning of July 18, 2019 (not July, 16 2019) to do the move-out inspection but he was not certain of the time. The tenant acknowledged that the landlord took photographs after arriving at the property. According to the tenant, further cleaning was required so the property manager left for a few hours and then returned in the early afternoon and began completing the move-out inspection report. The tenant is of the position that the landlord's photographs were taken before he performed additional cleaning tasks. The tenant is of the position that the only evidence he has to demonstrate the level of cleanliness when he left is the move-out inspection report since he did not take any photographs.

Below, I have summarized the landlord's claims against the tenants and the tenants' positions.

Unpaid rent for May 2019: \$1,150.00

The landlords seek to recover the rent not paid for the month starting May 15, 2019, less an authorized deduction of \$250.00 in recognition the tenants were out of the house due to the oven fire for five days. The landlords calculated the rent abatement as being five days at the daily rate of \$50.00 (rounded up from the actual per diem rate of \$45.16).

The tenant was of the position that rent is not payable because the tenants were staying in alternative accommodation for 12 days due to the oven fire and did not have a

replacement oven for another 9 days, so the tenants ought to be compensated for 20 days for loss of use and enjoyment equivalent to the amount of the monthly rent.

The tenant also submitted that he had a discussion with the property manager about a rent abatement and the property manager said he would speak with the owners, but he failed to do so.

The tenant acknowledged that he did not have authorization to withhold rent by an Arbitrator or the landlord other than the \$250.00 offered by the landlord.

The property manager responded by stating he did speak with the owners about a rent abatement and they were agreeable to a reduction of \$250.00 which he communicated to the tenants in writing in the letter of May 28, 2019 that accompanied the 10 Day Notice.

The landlords were of the position the tenants were not displaced for 12 days as the rental unit was cleaned and ready for occupancy on May 17, 2019. The landlords also provided the tenants with a temporary cooking appliance while awaiting the installation of a new range.

Unpaid rent for June 2019: \$1,400.00

The landlords submitted that the tenants failed to pay rent that was due on June 15, 2019. The tenant acknowledged responsibility to pay rent that was due on June 15, 2019.

Invoice for cleaning tenants' personal possession: \$681.54

The landlords submitted that when the restoration company attended the rental unit to clean the property following the oven fire the tenant requested the restoration company also clean some of their personal possessions, which the restoration company did. The restoration company invoiced the landlord for cleaning of the rental unit, which was paid; however, the restoration company invoiced the tenant for cleaning of the tenants' personal possessions and the tenants did not pay the restoration company.

The tenant acknowledged that some of their personal possessions were cleaned by the restoration company, but the tenant denied entering into a written contract to pay the restoration company for cleaning of their personal possessions. The tenant stated that when the restoration company attended the property, he understood that the landlords

would be paying for all of the cleaning. The tenant stated he had not received a copy of the restoration company's invoice except through the landlord's evidence package. The tenant pointed out that the landlord has not paid the restoration company for cleaning of the tenants' personal possessions either.

The landlords acknowledge there was no written contract between the restoration company and the tenant, but that the restoration company had an oral agreement with the tenant, based on a written statement of the owner of the restoration company. The landlords were of the position that if the tenants had carried insurance their insurance policy would have covered the cost to clean the tenants' personal possessions. The landlords acknowledged that they have not paid the restoration company for cleaning of the tenants' personal possessions since it was not their obligation to do so but the landlord stated they "intend to" pay the restoration company because the rental unit is in a small town.

Cleaning rental unit at end of tenancy: \$325.00

The property manager testified that the rental unit was not left clean at the end of the tenancy and a cleaning lady was hired at a cost of \$325.00. The property manager pointed to the photographs he took on July 16, 2019 and the cleaning invoice as support for this claim.

The tenant was of the position they are not obligated to pay for cleaning performed after they moved out for a number of reasons, as follows:

1. The rental unit was unclean when the tenancy started.

The tenant testified that as proof the rental unit was not clean at the start of the tenancy, the female owner had included a hand-written note on the tenancy agreement apologizing for the condition of the property and that the tenants would be fully compensated for cleaning the rental unit. The tenant further testified that instead of receiving money they received a pot and flowers from the landlord. The tenant acknowledged that they did not pursue the matter further with the landlord and in a conversation he had with the male owner he told the owner to forget about compensating them for cleaning as they were very grateful to have moved into the rental unit.

The owner denied making the hand-written note on the tenancy agreement as the tenant described. The owner claimed the tenant's statements above were

completely fabricated, with the exception of giving the tenants a pot and flowers. The landlords stated they gave the tenants the pot and flowers as a showing of good will at the start of the tenancy. The owner recalls an oral conversation with the tenant that the owners intended to update the home over time but that the rental unit was given to the tenants in a clean condition.

2. The tenant performed more cleaning after the property manager took photographs on the day of the move-out inspection.

The property manger was of the position the tenant's statement is false.

I have described the parties' respective positions concerning what transpired on the day of the move-out inspection earlier in this section and I do not repeat it here.

3. The tenants were denied the opportunity to clean more since the property manager informed the tenant that the owners needed possession of the property by 3:00 p.m. on the day of the move-out inspection.

The property manager was of the position the tenant's description of events at the end of the tenancy is inaccurate. The property manager described how the tenants had left some personal possessions at the property after the tenant returned possession of the rental unit to him. The property manager described in detail how the tenant made several proposals to return to the property to retrieve the items on various dates, but that the tenant did not show up, except on July 26, 2019 when he returned to the property and proceeded to unplug the freezer but leave the food behind; removed the desk; and, said he was coming back in the afternoon, but he did not. Eventually on July 26, 2019 the tenant signed a document acknowledging he had abandoned anything left in the property.

Abandoned property: \$99.75

The landlord seeks compensation for having to deal with the tenant's personal possessions that were left behind at the property after the tenant returned possession of the rental unit to the property manager. The amount of compensation was estimated

based on what a storage locker would cost for a month. The landlord pointed out that no rent was claimed for July 2019.

The property manager submitted that a couch, desk, piano, food, among other things were left at the property until the tenant retrieved the desk on July 26, 2019 and the tenant sent a moving crew to remove the piano in September 2019. The other items were disposed of by the property manager after the tenant signed to acknowledge abandonment of the property on July 26, 2019.

The tenant submitted that he had sent several messages to the property manager in an attempt to retrieve items left behind. The property manager acknowledged receiving several proposals from the tenant but stated the tenant would often not show up and then the tenant eventually abandoned many items. Further, the property manager had to attend the property on July 26, 2019 and again in September 2019 to permit access for removal of the desk and the piano.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The landlord's burden of proof is based on the balance of probabilities.

Based on everything before me, I provide the following findings and reasons.

Unpaid rent for May 2019

Section 26 of the Act provides that a tenant is required to pay rent when due under their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very

specific and limited circumstances when a tenant may lawfully withhold rent. Those limited circumstances are where a tenant has: overpaid a security deposit; overpaid a pet damage deposit; overpaid rent previously; paid for an emergency repair to the property as defined under section 33 of the Act; or, had obtained the authorization to do so by an Arbitrator delegated by the Director of the Residential Tenancy Branch. Under common law, a legal right to withhold may also be established where the landlord has waived entitlement to receive the rent.

In this case, I find the tenant did not have entitlement to withhold rent under one of the specific provisions of the Act and the tenants were obligated to pay rent on May 15, 2019 under section 26 of the Act even though there had been an oven fire, and the breached section 26 of the Act. The landlords had expressly waived entitlement to receive \$250.00 of the rent owed for May 2019 by way of a letter written by the property manager on May 28, 2019. Evidently, the tenants were unsatisfied with the landlord's rent abatement and the tenants had made a monetary claim against the landlords by way of their application of June 5, 2019 but their claims were dismissed by the Arbitrator. Therefore, I find the landlords entitled to recover rent for May 2019 in the net amount sought of \$1,150.00 after deducting the amount waived by the landlords.

Unpaid rent for June 2019

The tenant acknowledged the rent due on June 15, 2019 was not paid and the tenants are responsible for paying the amount claimed. Therefore, I award the landlords the amount requested of \$1,400.00.

Invoice for cleaning tenants' personal possession

Based on the landlord's own evidence, in particular the invoice issued by the restoration company for cleaning of the tenant's personal property and the statement of the owner of the restoration company, it appears the landlords are attempting to prove the tenants owe the restoration company and the tenants have failed to do pay the restoration company. However, a tenant's debt to a service provider is a matter between the tenant and the service provider unless the tenant's failure to pay the service provider violates the tenancy agreement and it creates a loss for the landlord. An example of such is where a tenant is required to pay for their own utilities and the tenant fails to pay the utility company, resulting in a disconnection of the utility and utility company's refusal to reconnect the utility to the property until the account is paid and the landlord is forced to pay the tenant's arrears so as to reconnect the utilities for the benefit of the incoming tenant.

There is no obligation in the tenancy agreement or the Act for the tenants to pay a service provider for cleaning of the tenant's own property. Further, the landlords acknowledged they have not paid the restoration company for the subject invoice addressed to the tenant and I was not provided any evidence of suggestion that they are required to. Rather I heard that the landlords "intend to" pay the restoration company for cleaning the tenant's personal possessions because it is a small town. While I applaud their moral and/or ethical stance, I cannot find a violation of the Act, regulations or tenancy agreement on part of the tenant with respect to this invoice or a loss on part of the landlords and I must dismiss this component of the landlords' claim against the tenants.

Cleaning rental unit at end of tenancy

Section 37 of the Act requires a tenant to leave a rental unit "reasonably clean" at the end of the tenancy. Despite the tenant's attempt to persuade me that the rental unit was unclean at the start of the tenancy and the landlord agreed to compensate them for cleaning at the start of the tenancy, which I do not accept, it remains that there is no exemption from a tenant's statutory obligation to leave the rental unit "reasonably clean" at the end of the tenancy and the obligation is not dependant on the level of cleanliness at the start of the tenancy.

The tenant and the property manager provided consistent testimony that the tenant returned possession of the rental unit to the property manager at approximately the same time the property manager took photographs of the rental unit. As such, the time the tenant had to clean the unit came to an end at that time as a landlord is not obligated to continue to provide the tenant access to the rental unit after the tenant returns possession.

While the tenant argued the property manager took his photographs before he performed more cleaning, the tenant pointed to the move-out inspection report as being the evidence that reflects how clean he left the property. As such, I give the most evidentiary weight to the move-out inspection report.

The move-out inspection report reflects the rental unit was dirty in several areas including: walls, trim and windows in most every room, as well as numerous areas in the kitchen and bathroom. The landlord's photographs appear to support the move-out inspection report. Therefore, I find there is a preponderance of evidence to

demonstrate the tenants did not leave the rental unit reasonably clean as they were required to do and they breached section 37 of the Act.

The landlord provided a cleaning receipt and I find the amount to be within reason considering the amount of cleaning required, as demonstrated by the landlord's evidence. Therefore, I grant the landlord's request to recover \$325.00 from the tenants for cleaning.

Abandoned property

Section 37 of the Act requires that a tenant leave a rental unit vacant at the end of the tenancy. This includes removal of all of the tenant's personal property and garbage.

In this case, it was undisputed that the tenants left some items behind after returning possession of the property to the landlord and those items remained their sometime until the tenant arranged to pick them up or declare them to be abandoned. I accept that in doing so the tenants benefited from storage of those items and the landlord incurred loss of time to have to deal with the picking up of those items and disposal of other items declared abandoned. I find the landlord's request for compensation of \$99.75 to be very reasonable and I award that amount to the landlords, as requested.

Filing fee, security deposit and Monetary Order

The landlords were largely successful in their claims against the tenants and I further award the landlords recovery of the \$100.00 filing fee paid for their application.

I authorize the landlords to retain the tenants' \$675.00 security deposit in partial satisfaction of the amounts awarded to them in this decision.

In keeping with all of my findings above, I provide the landlords with a Monetary Order to serve and enforce upon the tenants, as calculated below:

Unpaid rent for May 2019	\$1,150.00
Unpaid rent for June 2019	1,400.00
Cleaning at end of tenancy	325.00
Abandoned property	99.75

Filing fee	100.00
Less: security deposit	<u>(675.00)</u>
Monetary Order for landlords	\$2,399.75

Conclusion

The landlords are authorized to retain the tenants' security deposit and are provided a Monetary Order for the balance of \$2,399.75 to serve and enforce upon the tenants.

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: November 1, 2019

Residential Tenancy Branch