



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MND MNDC MNSD FF / MNDC RPP

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for unpaid rent, utilities and compensation for damage or loss 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 the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to return the tenant’s personal property pursuant to section 65.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenants acknowledged service of the landlord’s application and evidence except for a Facebook post made by the tenant and a fire investigation report. The landlord testified that all evidence was included in the packages sent to the tenants and included pictures of the contents of each package. I find the landlord did serve all its evidence on the tenants as supported by the registered mail receipts and photos provided.

Issues

Is the landlord entitled to a monetary award for unpaid rent, utilities and compensation for damage or loss?

Is the landlord entitled to retain the tenants' security and pet deposit?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Are the tenants entitled to monetary compensation for the landlord's failure to return personal property?

Background and Evidence

The tenancy for this upstairs portion of a residential house began on April 1, 2018. The monthly rent was \$2000.00 payable on the 1st day of each month. The tenancy agreement stipulates the tenants were also responsible for 2/3 utilities, but the parties confirmed that rather a flat rate of \$200.00 per month was paid by the tenants from the beginning of the tenancy. A security deposit of \$1000.00 and a pet deposit of \$300.00 was paid at the start of the tenancy which the landlord continues to retain. In a previous decision dated August 1, 2019 the landlord was granted an Order of Possession on an emergency basis. The Order of Possession was served on the tenants on August 2, 2019 providing the tenants 48 hours to vacate. The landlord provided the tenants an additional 48 hours and the tenants vacated the unit on August 5, 2019.

The landlord testified that after a fire in the rental unit, the tenants and the landlord entered into a mutual agreement to end tenancy effective July 1, 2019. The landlord claims the tenants reneged on this agreement and overheld the unit until August 5, 2019.

The landlord is claiming \$1000.00 for its insurance deductible and submits the tenants' negligence caused the fire as the tenant J.G. left the stove on unattended. The landlord submitted a fire inspection report in which the tenant acknowledged leaving the stove on and Facebook posts by K.A. in which she also acknowledges that J.G. left the stove on.

The landlord is claiming \$2333.33 for loss of rent for July 2019 and a prorated amount for August 2019 as the tenants overheld and did not pay any rent for this period.

The landlord is claiming \$483.33 for unpaid utilities for June, July and prorated August 2019. The landlord testified the tenants did not pay any utilities for this period.

The landlord is claiming \$1200.00 for loss of rent from the basement unit. The landlord testified that the entire house needed to be vacated for the restoration work and the tenant vacated on July 1, 2019 as per a similar mutual agreement to end tenancy. The landlord claims the restoration work has been detailed as the tenants overheld so feel the tenants should also be responsible for this loss.

The landlord is also claiming \$1071.00 for landscaping work required due to the tenants alleged neglect of the yard. The landlord submitted a quote for this work. The landlord submits the tenancy agreement requires the tenants to maintain the lawn and do weeding of plants.

The tenants argue the fire was caused by a faulty stove knob so they should not be responsible for the insurance deductible. The tenants submit the statement made to the fire department was not correct and they have since attempted to correct the statement. The tenants submit the Facebook post was also incorrect as they were just shaken at the time of posting.

The tenants do not agree they should have to pay rent for the overhold period and argue the power was cut off to the house this entire time and the landlord refused to return their security deposit so they could leave.

The tenants do not agree to the utilities again arguing there was no power and they were eating out all the time. The tenants acknowledged they were able to get the refrigerator working.

The tenants argue the basement tenant had given notice and was moving regardless.

The tenants argue they continued to cut the lawn but just did not do any weeding.

With respect to the tenants' own application, the tenants are seeking recovery of the security and pet deposit including double the amount. The tenants provided a forwarding address by e-mail on August 8, 2019.

The tenants are also seeking \$19,650.00 for the landlord's failure to return personal property consisting of large granite slabs. The tenant J.G. testified that he is a granite installer by trade and several granite sheets were left on the side of the house. The tenants testified that two days after they vacated, they tried to arrange to pick up the slabs but were refused by the landlord. The tenants submitted a quote for the value of the granite left behind. The tenants deny telling the landlord they could keep the granite and question why they would just give the landlord \$20,000.00 material.

The landlord testified that the tenants left behind numerous belongings which were for the most part garbage. The landlord argues the tenants overheld for a 5-week period, so they had plenty time to remove belongings. The landlord testified they even provided an additional day for the tenants to remove belongings after serving the Order of Possession. The landlord testified the tenants expresses no intent to come back for the items. The landlord submits the granite left behind was part of a broken countertop with little or no value. The landlord submits the tenants had previously attempted to sell the material for \$1500.00 but was not able to do so. The landlord testified that they did not hear back from the tenants about coming to pick up the material until 6 days after they had vacated. The landlord also submits that in a text message the tenants referred to the material as having a \$2000.00 value not \$20,000.00. The landlord

also argues that the tenants were originally only seeking a return of the \$300.00 pet deposit as requested in the e-mail containing the forwarding address as they had previously agreed the landlord could retain the security deposit towards the insurance deductible.

The tenants replied that the previous advertisement for \$1500.00 was a mistake and the ad was removed.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Pursuant to section 67 of the Act, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Policy Guideline #16 “Compensation for Damage or Loss” provides the following guidance:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In the August 1, 2019 decision, the Arbitrator has already made a finding that the tenants negligence caused the fire. This decision is final and binding and cannot be revisited. The landlord incurred a loss as a result of the fire and has submitted proof of the loss. The landlord claim for the **\$1000.00** insurance deductible is allowed.

I find the tenants overhauled and did not pay any rent for the period of July 1, 2019 to August 5, 2019. The tenants still occupied the unit even though they allege the power was cut. The landlord is awarded **\$2322.58** (\$2000.00 for July + \$2000.00 x 5/31 days for August).

I find the tenants did not pay any utilities as claimed by the landlord for June, July and prorated August 2019. The tenants occupied the unit for this entire period even though they allege power was cut for a part of it. The tenants acknowledged the refrigerator was still working so I do not find it credible that the power was cut as alleged. The landlord is awarded **\$432.26** (\$200.00 for June + \$200.00 for July + \$200.00 x 5/31 days for August)

I accept the landlord's claim that the tenants' actions of overholding delayed the restoration work and as such the landlord suffered a loss of rent for the basement unit for the month of July 2019. The landlord is awarded **\$1200.00** as claimed.

The landlord's claim for landscaping work required due to the tenants neglect of the yard is dismissed. The landlord only submitted a quote for this work and not any evidence of this loss being incurred. I find the quote to be excessive for lawn maintenance. Further, the tenancy agreement only refers to the tenants' obligation to mow the lawn and is silent on any weeding of plants.

As the landlord was for the most part successful in his application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for his application.

I allow the landlord to retain the balance of the security and pet deposit in total of \$1200.00 in partial satisfaction of the monetary award.

The landlord is therefore granted a monetary order in the amount of \$3,854.84 (\$1000.00 + \$2322.58 + \$432.26 + \$1200.00 + \$100.00 - \$1200.00).

The tenants provided a forwarding address to the landlord on August 8, 2019. The landlord's application was filed on August 23, 2019, which is within the 15-day time limit provided for under the Act as per section 38 of the Act. The landlord has been permitted to retain the balance of the tenants' security and pet deposit. As such, the tenants claim for return of the security and pet deposit including double the amount is dismissed without leave to reapply.

I find the tenants have also failed to establish the value of the granite left behind. The tenants vacated the unit on August 5, 2019, three days after being served with an order of possession. There is no mention of the tenants coming back to pick up possessions in the move-out inspection report or in the forwarding address e-mail sent to the landlord three days after they vacated. This is not plausible if the tenants had in fact left behind close to \$20,000.00 of possessions. The tenants made no request to retrieve the material until August 11, 2019, six days after they had vacated. I find that in the circumstances the landlords were within their right

to treat the items as abandoned with little or no value and disposing of them. The tenants claim for compensation and/or return of personal property is dismissed without leave to reapply.

Conclusion

Pursuant to section 67 of the *Act*, **I grant the landlord a Monetary Order in the amount of \$3,854.84.** 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: December 27, 2019

Residential Tenancy Branch