



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR MND MNSD FF
Tenant: MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on May 21, 2020.

The Landlord and the Tenants all attended the hearing. Both parties confirmed receipt of each other's documentary evidence and Notice of Hearing packages.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Landlord

- Is the Landlord entitled to compensation for damage to the rental unit or for unpaid rent?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenants?

Tenants

- Are the Tenants entitled to the return of the security deposit held by the Landlord?
- Are the Tenants entitled to a compensation for loss of quiet enjoyment?

Background and Evidence

Both parties agree that:

- The tenancy began on November 30, 2018, and that it ended on December 10, 2019, the day the Tenants vacated the rental unit.
- A move-out inspection was completed on December 14, 2019, but the Tenants signed it saying they did not agree to what the Landlord listed (unclean carpets).
- The Landlord still holds \$2,000.00 as a security and pet deposit
- The Tenants provided, and the Landlord received, their written Notice to End Tenancy plus their forwarding address in writing on October 31, 2019.
- Monthly rent was set at \$2,000.00 and was due on the 30th of the month.

The Tenancy Agreement provided into evidence shows the following:

3. RENT (please fill in the information in the spaces provided)

a) **Payment of Rent:**
 The tenant will pay the rent of \$ 2000.00 each (check one) ☐ day ☐ week ☒ month to the landlord on the first day of the rental period which falls on the (due date, e.g., 1st, 2nd, 3rd, ..., 31st) 30 day of each (check one) ☐ day ☐ week ☒ month subject to rent increases given in accordance with the RTA.
 The tenant must pay the rent on time. If the rent is late, the landlord may issue a Notice to End Tenancy for Unpaid Rent (form RTB-30) to the tenant, which may take effect not earlier than 10 days after the date the notice is given.

b) **What is included in the rent:** (Check only those that are included and provide additional information, if needed.)
 The landlord must not terminate, or restrict a service or facility that is essential to the tenant's use of the rental unit as living accommodation, or that is a material term of the tenancy agreement.

<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Natural gas	<input checked="" type="checkbox"/> Garbage collection	<input checked="" type="checkbox"/> Refrigerator	<input checked="" type="checkbox"/> Carpets
<input type="checkbox"/> Cablevision	<input checked="" type="checkbox"/> Sewage disposal	<input type="checkbox"/> Recycling services	<input checked="" type="checkbox"/> Dishwasher	<input checked="" type="checkbox"/> Parking for <u>Two</u> vehicles
<input checked="" type="checkbox"/> Electricity	<input type="checkbox"/> Snow removal	<input type="checkbox"/> Kitchen scrap collection	<input checked="" type="checkbox"/> Stove and oven	<input type="checkbox"/> Other: <input type="text"/>
<input type="checkbox"/> Internet	<input checked="" type="checkbox"/> Storage	<input type="checkbox"/> Laundry (coin-op)	<input checked="" type="checkbox"/> Window coverings	<input type="checkbox"/> Other: <input type="text"/>
<input checked="" type="checkbox"/> Heat	<input type="checkbox"/> Recreation facilities	<input checked="" type="checkbox"/> Free laundry	<input type="checkbox"/> Furniture	<input type="checkbox"/> Other: <input type="text"/>

☒ Additional information: * Included for 60% cost of house Average.
(60% is payable monthly with rent)

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The above agreement lists that some utilities are included, and some are not. The Landlord wrote the following "included for 60% cost of house average. 60% is payable monthly with rent".

Landlord's application

The Landlord provided a monetary order worksheet where he is seeking \$2,504.00 in compensation for 2 items, as follows:

1. \$2,168.00 – Rent and utilities for December 2019
2. \$336.00 - Carpet Cleaning

With respect to item #1, the Landlord explained that the Tenants failed to pay rent, when due, on November 30, 2019, and they did not move out until December 10, 2019. The Landlord explained that he received written notice from the Tenants, on October 31, 2019, that they would be moving out at the end of November. However, the Landlord stated that since rent is due on the 30th of the month, the Tenants were required to provide their written notice by October 29, if they wanted to end the tenancy for the end of November. The Landlord stated that, despite the fact that he was around the house on October 29, the Tenants didn't give him written notice until October 31, 2019, when they gave it to him in person. The Landlord stated he made it clear to the Tenants that their notice was late, and was not sufficient to end the tenancy for the end of November.

The Tenants acknowledge that they did not pay rent on November 30, 2019, for the month of December. They also acknowledge that they did not move out until December 10, 2019. The Tenants stated that they had become frustrated with the Landlord and their relationship with him had began to sour, so they wanted to end the tenancy after the lease expired at the end of November 2019. The Tenants acknowledged that they did not give proper written notice until October 31, 2019.

With respect to the 2nd item, the Landlord stated that the carpets were not cleaned to his satisfaction, and he does not believe they were done professionally. The Landlord explained that since the Tenants had a dog, and had lots of heavy equipment around, they should have professionally cleaned the carpets. Other than the disputed condition inspection report, the Landlord did speak to any photos of the carpet damage or staining. The Landlord provided a receipt for carpet cleaning which happened on December 16, 2019.

The Tenants stated that they cleaned the carpets with their personal steam cleaner. The Tenants provided a photo of the cleaner they used (which they own), and they also provided photos of the carpets, which they took at the move-out inspection on December 14, 2019. The photos show well vacuumed and reasonably clean carpets.

Tenants' Application

The Tenants are seeking two items as follows:

1) \$4,000.00 – Double security deposit and pet deposit

The Tenants are seeking double their deposits, because the Landlord did not return any of their deposit, despite having their forwarding address in writing.

The Landlord confirmed that he got the Tenants' forwarding address in writing on October 31, 2019, and also confirmed that the Tenants moved out on December 10, 2019. The Landlord filed an application against the security deposit on December 18, 2019, and confirmed that he still holds the amounts.

2) \$13,008.00 – Loss of Quiet Enjoyment

The Tenants are seeking a full refund in rent they paid over the period of June 2019 until November 2019 (6 months x \$2,168.00). The Tenants stated that the tenancy was unbearable and unlivable from June 2019 onwards because of the Landlord. The Tenants stated that the Landlord entered their unit 22 times from January 2019 until December 2019 and some days, the Landlord would require access for the whole day for some repairs. The Tenants stated that the continual inspections and notices to enter warrant a claim for loss of quiet enjoyment. The Tenants stated that they were "harassed and intimidated" but did not elaborate on this further.

The Tenants stated that the Landlord was not happy with how they were living, using the property, and since he lived downstairs, he was always keeping an eye on what they were doing. The Tenants stated that the Landlord would constantly watch them, and meddle with their way of life. The Tenants deny that they were running a business out of the property, despite what the Landlord alleges. The Tenants stated they felt uncomfortable in their own house due to the Landlord's supervisory approach.

The Tenants stated that Landlord disapproved of their use of the property, where they stored things, and what items they stored. The Tenants also stated that the Landlord was constantly bombarding them with interruptions telling them how to look after their dog. The Tenant also stated that the Landlord would be unreasonably picky with respect to their cleanliness and potential "biohazards".

The Landlord explained that he never once entered the rental unit without proper notice or without a specific reason. Copies of most of the notices were provided into evidence and they list the time, date, and reason for entering the unit. The Landlord explained that he went to great lengths to do his due diligence in every aspect, both for the

protection of the tenancy, and his house itself. The Landlord explained that he would do monthly inspections, and in addition to these, he had to enter the unit for other repairs and issues. The Landlord explained that, of the 22 times he entered the unit over the year, 9 were for regular monthly inspections, 5 were for significant roof and attic repairs, and others were for follow ups.

The Landlord explained that the roof was repaired shortly before the Tenant's moved in, and there have been some major issues with the roof since that time which warranted follow up and inspection. The Landlord explained that there were leaks, and structural repairs that were needed, and this increased the need for inspections.

The Landlord explained that he would frequently see hazardous items stored around the property, and on the deck. The Landlord stated that he saw trays of fluids, old batteries, engine parts, broken down cars, numerous boat motors, and many industrial/commercial items which caused him concern. At one point, the Landlord had to ask the Tenants not to chain their boat motors to the gas line. The Landlord explained that he was concerned the Tenants were running a salvage business out of the property and that this would be a violation of his house insurance, which is why he kept an eye on the use of the property. Some photos were provided into evidence which show a substantial amount of personal property stored in a variety of spots (shed, yard, deck).

The Landlord stated that most of the notices to enter were for small windows of time, and only two were for a full day, but this was done to give the Tenants flexibility in terms of when the tradespeople would enter.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

For each application, the burden of proof rests on the applicant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the applicant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the applicant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Monthly Rental Amount

The parties provided a tenancy agreement into evidence and it shows that monthly rent was \$2,000.00 and was due on the 30th of the month. This agreement suggests that some utilities were not included (electricity, gas, garbage, water), while others were. The tenancy agreement also notes a proportionate percentage of utilities (60%) and also mentions an “average” of the costs. However, I find the Landlord’s verbiage on the tenancy agreement is unclear and neither party specified in the hearing how the utility amount was broken down. On the Tenancy Agreement, the Landlord wrote “included for 60% cost of house average”. I do not find it sufficiently clear what this means, and how the utilities were broken down. Ultimately, I find it is clear that the base monthly rent was \$2,000.00, but the utility bill breakdown is not sufficiently clear such that I can determine what utilities the tenants are responsible, in what proportions, and which bills they are not responsible for. No utility bills were provided into evidence.

In this proceeding, the monthly rent and utility amount is relevant for both applications. The Landlord is seeking to recover \$2,168.00 for the month of December 2019 for rent and utilities. The Tenants are seeking a 100% refund of 6 months rent and utilities (\$2,168.00x6). However, I find the amount of utilities due is not sufficiently clear and laid out on the written tenancy agreement, or in the testimony. For the purposes of this application, I will only consider monthly rent as \$2,000.00. The Tenants’ application for loss of quiet enjoyment will be limited to 6x\$2,000.00, rather than 6x\$2,168.00 because of the lack of clarity regarding what utilities were. Further, the Landlord’s request for compensation for December 2019 rent and utilities is limited to \$2,000.00, for the same reason. In other words, the utility portion of this application is not sufficiently clear and neither party has sufficiently demonstrated what, beyond the \$2,000.00 base rent, was due each month.

Tenants’ Application

- 1) \$4,000.00 – Double security deposit and pet deposit

Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant’s forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, the Tenants confirmed they served the Landlord with their forwarding address in writing on October 31, 2019. The Landlord confirmed getting it on this day. The parties confirmed that the Tenants moved out on December 10, 2019, which I find reflects the end of the tenancy. As such, the Landlord had until December 25, 2019, to either file an application against the deposits, or return them in full. I note the Landlord filed an application against the deposits on December 18, 2019. I find the Tenants are not entitled to double the security deposit, since the Landlord did not breach section 38(1) of the Act. The \$2,000.00 deposits still held by the Landlord will be addressed further below.

2) \$13,008.00 – Loss of Quiet Enjoyment

The Tenants are seeking 100% of the rent they paid over the period of June 2019 until November 2019 (6 months x \$2,168.00). However, as stated above, this amount is limited to 6 x \$2,000.00 (\$12,000.00). The Tenants stated that the tenancy was unbearable and unlivable from June 2019 onwards because of the Landlord's constant inspections and because he "harassed" them.

I acknowledge that the Tenants have claimed the Landlord's constant monitoring of the premises, his frequent inspections and requests to enter, and his interaction with them has caused them a significant loss of quiet enjoyment. The Tenants are seeking all of their rent back for a 6 month period. However, I find this claim is excessive and unsupported by their testimony and evidence.

Loss of Quiet Enjoyment

Section 28 of the Act, states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the Landlord's right to enter the rental unit in accordance with section 29;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 (Entitlement to Quiet Enjoyment)

A Landlord is obligated to ensure that the Tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment

means substantial interference with the ordinary and lawful enjoyment of the premises.

I note that a large portion of the notices to enter, provided by the Landlord, were provided into evidence. I find these notices are generally clear and in the appropriate form. They indicate why the entrance is necessary, and when it is to occur. There is no evidence the Landlord ever entered without proper notice, or without a reasonable basis. I accept that there were a variety of reasons for the 22 notices to enter over the year of 2019. It appears there was a combination of monthly inspections, issues with the roof/attic, and also some issues the Landlord wanted to follow up within the rental unit.

I do not find there is any evidence that the reasons to enter were unwarranted or unreasonable. Further, I note that some of the notices to enter were for extended periods of time (full day), but I also note that most of them were specific and limited. In any event, I do not find the Landlord's notices to enter, or his inspections were excessive, or unwarranted such that I could find that the Tenants ought to be awarded compensation for loss of quiet enjoyment.

The Tenants also expressed that the Landlord was controlling and threatened them with eviction. The Landlord explained that he had genuine concern for his property, how it was being used, and whether the Tenants were violating the terms of his house insurance by running a business. It appears the Landlord was concerned over several issues, including whether the Tenants were operating a business, how and where they let their large dog feed (the Landlord was concerned about mess and the floors inside), and many of the items they chose to store in and around the property. I accept that this caused some negative interactions and tension, but I do not find the Tenants have sufficiently demonstrated that any of these issues were significant or severe enough such that it impacted their quiet enjoyment or that their ordinary and lawful enjoyment was substantially interfered with. I find the Tenants have failed to establish a claim for loss of quiet enjoyment. I dismiss this part, in full.

Landlord's application

1. \$2,168.00 – Rent and utilities for December 2019

As stated above, the Landlord's claim for reimbursement of rent and utilities is limited to \$2,000.00 (the base rental amount) as the utility breakdown is unclear.

I note the tenancy was a fixed term, ending on November 30, 2019. This means the Tenants were legally entitled to end the tenancy effective that date, but they were required to provide written notice at least one month before the day in which rent is due, which is the 30th of the month. The Tenants provided their written notice on October 31, 2019, to end the tenancy on November 30, 2019. I find the Tenants breached section 45(2) of the Act by failing to give at least one month's notice. Further, I note the Tenants failed to pay rent on November 30, 2019, for the month of December, despite not moving out until December 10, 2019. I find the Tenants are liable for the month of December for their breach of section 45(2) of the Act and because they lived in the rental unit for a portion of the month, which would have left the Landlord in a difficult position to try and mitigate his loss by re-renting it for that month.

I award the Landlord \$2,000.00 for unpaid rent for December 2019.

2. \$336.00 - Carpet Cleaning

I note that Policy Guideline #1 states that:

CARPETS

[...]

3. The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

4. The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

The Landlord stated that he did not feel the carpets were clean enough, and because they had pets and worked on heavy equipment, they should have to pay for professional cleaning. I note the Landlord provided a copy of the receipt for this item. However, I also note the Landlord did not present any documentary evidence to show that there were stains or issues with the carpet which warranted steam cleaning, beyond what the Tenants stated they did. I note the Tenants provided photos of the rental unit at the end of the tenancy which show clean looking carpets. The Tenants also stated they steam cleaned the carpet, and provided a photo of the unit they used. I accept the that

Tenants likely cleaned the carpets prior to moving out and I do not find the Landlord has sufficiently demonstrated that they required a second steam cleaning. I dismiss this item, in full.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was largely successful in this hearing, I award him the \$100.00 he paid to file this application and I decline to award the Tenants with the recovery of their filing fee, as they were not successful with their application.

In summary, I find the Landlord is entitled to the following monetary order:

Item	Amount
Unpaid Rent	\$2,000.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$2,100.00
LESS: Security and Pet Deposit	\$2,000.00
Total Amount	\$100.00

Conclusion

The Landlord is granted a monetary order in the amount of **\$100.00**, as specified above. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: May 22, 2020

Residential Tenancy Branch