



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit; unpaid rent and utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit.

Preliminary and Procedural Matters

The hearing commenced on March 14, 2012 and I determined it appropriate to adjourn the hearing with instructions that the landlords prepare and serve Monetary Order worksheets to me and the tenants to better understand the various components of the landlords' claims and to allow the tenants to respond to the more detailed information.

The landlords' Monetary Order worksheet revealed a slightly less total claim than that on the application. I amended the claim to that corresponding to the Monetary Order worksheet.

The hearing was reconvened on April 4, 2012 and again on May 2, 2012 in order to provide each party, and their respective witnesses, the opportunity to make relevant submissions and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Have the landlords established an entitlement to recover compensation for damage to the rental unit?
2. Have the landlords established an entitlement to unpaid rent and utilities from the tenants?
3. Have the landlords established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
4. Are the landlords authorized to retain the tenants' security deposit?

Background and Evidence

I heard undisputed evidence and consistent testimony as to the following information:

- The tenants resided on the main level of the house and the female landlord and her boyfriend resided in the basement suite.
- The fixed term tenancy commenced February 1, 2011 and had an expiry date of January 31, 2012.
- The tenants paid a \$600.00 security deposit.
- The tenants were required to pay rent of \$1,200.00 on the 1st day of every month and 2/3 of utilities to the landlords. The tenants had provided the landlord with 12 posted dated cheques for \$1,200.00 at the beginning of the tenancy.
- In December 2011 the tenant approached the female landlord about moving out and ending the tenancy effective January 15, 2012 and the landlord was largely agreeable to this.
- A dispute subsequently arose with respect to payment for January's rent: The landlord wanted to cash the \$1,200.00 post dated cheque in her possession and use the excess toward outstanding utilities. The tenant wanted to use the security deposit in satisfaction of the half-month's rent and pay the utilities separately.
- The landlord prepared a Mutual Agreement to End Tenancy with an effective date of January 15, 2012 and presented it the tenants for signature. The tenants would not sign the document and communication essentially ceased.
- On January 3, 2012 a series of events took place, as described below, and the tenants began moving out that day and were finished in the early morning hours of January 4, 2012.

On January 3, 2012 the following series of events took place:

- The landlord attempted to cash the rent cheque in her possession and was informed by the financial institution that there were insufficient funds in the tenant's account to cash the cheque.
- At approximately 12:30 p.m., or thereabouts, the tenants' electricity supply was terminated at the breaker panel located in the landlord's living area by the landlord's boyfriend and the landlord's boyfriend parked his vehicle behind the tenants' vehicle.
- The male tenant asked the landlord's boyfriend to move his vehicle and he refused, stating the rent should have been paid.
- The female tenant, who was not home at the time, was informed of the situation by the male tenant and she called the police for assistance. The police informed

her that they would not respond to the property as this was a landlord/tenant dispute.

- The female tenant proceeded to rent a moving truck and called friends to assist with moving out of the rental unit.
- The landlord's boyfriend positioned himself in the garage, to protect anything from happening to his DJ equipment, and he called a few of his friends to the property since the tenants had multiple people with them.
- Eventually, an altercation and threats were made between a friend of the tenants and a friend of the landlord's boyfriend, and the police were called.
- The police attended the property and remained for quite some time to "keep the peace". After some convincing the police persuaded the landlord's boyfriend to restore the electricity in the late afternoon or early evening.
- The police left and the tenants continued moving into the late evening hours. The landlord found the tenants' noise level extremely loud and the landlord called the police. The police attended and told the tenants to keep the noise down.
- After the police left the loud noise level resumed and the landlord responded by turning off the electricity intermittently.
- The tenants completed their moving early in the morning of January 4, 2012. They were able to access their new rental unit early because the new unit was vacant.

The landlords and the landlords' witness submitted that the tenants had actually started moving into their new unit in late December 2011 as they were seen transporting boxes from the rental unit and observed moving belongings into their new unit. The landlords suggested the tenants had already planned to move out on January 3, 2012 and their decision to move was unrelated to the lack of electricity or their vehicle being blocked by the landlord's boyfriend.

The tenants submitted that boxes seen leaving the rental unit were likely Christmas presents given the time of year. The tenants acknowledged they had access to their new unit in late December 2011 in order to decorate and move some possessions in ahead of time, with the permission of their current landlord. The tenants' witness confirmed that the moving truck was booked after the female tenant received a call from the male tenant about the situation at the rental unit and was unsuccessful in having the police attend the property to deal with the lack of electricity.

The landlords submitted that the landlord's boyfriend was not acting upon the instruction or direction of the landlords. The landlord's boyfriend confirmed that he took it upon himself to turn off the power and block the driveway however, in giving testimony, the

landlord's boyfriend often used the phrases of "we" or "us" when referring to interactions between the landlord and tenants. The landlords also pointed out that the tenants did not try to contact the landlords after the electricity was terminated.

The tenant acknowledged that the landlords were not called when the power was cut off as the tenants were under the assumption the power was terminated at the instruction of the landlord. The tenants pointed to statements the landlord's boyfriend was making to them on January 3, 2012. The statements were to the effect that the tenants should have paid their bills.

Unpaid rent

The landlords are seeking compensation of \$1,200.00 for loss of rent for January 2012 on the basis the tenants failed to give one full month of written notice as required under the tenancy agreement and the Act. Although the landlords were initially agreeable to ending the tenancy January 15, 2012 when the tenants verbally requested this, given the tenants' refusal to sign the Mutual Agreement or otherwise communicate with the landlords the landlord suffered a loss for the entire month.

The tenants are of the position that due to the circumstances of January 3, 2012 the landlord effectively forced them to move out. The tenants are willing to pay pro-rated rent for the days of January 1 – 3, 2012.

Utilities

The landlords are seeking recovery of 2/3 of the gas bills for November 16, 2011 through January 31, 2012 totalling \$246.96 (\$81.02 + \$116.55 + \$49.39). The bill for \$81.02 was presented to the tenants December 30, 2012 by the male landlord. The remainder of the bills were received after the tenants vacated.

The landlords are seeking recovery of 2/3 of the hydro bills for November 18, 2011 through January 31, 2012 totalling \$289.94 (\$233.84 + \$56.10).

The tenants were agreeable that they owed utilities up until January 3, 2012 but did not agree with paying for utilities after that date since they were forced from the rental unit on January 3, 2012.

Damage and cleaning

The parties provided consistent testimony that a move in inspection was conducted but that the inspection report was signed seven months later. The delay was largely attributed to a flood in the house that consumed the landlord's priorities. The move-in inspection report does not contain all of the information required under the Residential Tenancy Act Regulations.

The parties provided consistent testimony that a move-out inspection was conducted together on January 13, 2012. After January 3, 2012 the tenants were in possession of a key to the unit and were permitted to return to the property to clean. The landlords stated the move-out inspection was given to the tenants at the conclusion of the inspection. The tenants stated that they received it with the landlord's evidence package.

Below I have summarized the landlords' claims for damages and the tenants' responses:

<u>Items</u>	<u>Amount</u>	<u>Landlords' reason</u>	<u>Tenants' response</u>
Vertical blinds	61.45	Some of the veins had been pulled out and would not hang anymore. Cost to replace with white blinds less expensive than custom ordered blue textured veins. Blinds "recently updated" before purchase in 2008.	Two veins were down at beginning of tenancy. Other veins had been previously repaired by landlord using a hole punch. Tenant tried repairing in same manner. This is the result of normal wear and tear for patio door blinds.
Carpet cleaning	252.00	Carpets were stained and there was an odour necessitating professional cleaning. The cleaners were able to remove some stains but not others.	The tenant cleaning the carpets herself. The carpets were no cleaner after the professional cleaned the carpets.

Suite cleaning	252.00	Sears Maid Service cleaned the walls of various drips not removed by tenants. Kitchen drawers and cupboards required additional cleaning as did window sills.	The unit was left clean and pointed to the photographs as evidence of such.
Painting	163.97	Painted over pink marker and pen stains on walls as well as scuffs, gouges and holes in the walls.	The tenants patched and sanded holes but did not paint. Willing to pay for cost of white paint (\$29). Landlords' pictures were taken January 3, 2012 or earlier as indicated by furniture positioning in pictures.
Photo development	25.52		
Filing fee	<u>50.00</u>		
Total claim	\$ 2,559.76		

Evidence provided and considered for this proceeding included: photographs were provided by both parties (however, the tenants faxed in their photographs and were very difficult to view); condition inspection reports; invoices and utility bills; an unsigned Mutual Agreement to End Tenancy; various written correspondence between the parties; bank statements for the tenant's bank account (with amount and account numbers omitted); letters from the financial institutions of both parties; and, written submissions of both parties.

Analysis

Upon consideration of the evidence presented to me, I provide the following findings and reasons with respect to the matters under dispute with this application.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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.

Unpaid rent

Section 44 of the Act provides for ways a tenancy ends. Section 44(1)(c) provides that a tenancy ends if the landlord and tenant agree in writing to end the tenancy. Based upon the evidence before me, I accept that there was discussion about ending the tenancy January 15, 2012; however, the tenants would not sign the written Mutual Agreement to End Tenancy presented to them by the landlord. In the absence of a written agreement to end tenancy I find the tenancy did not end by mutual agreement and it remained in effect until such time it legally ended under another provision of section 44.

The Act requires a tenant to pay rent when due in accordance with the terms of their tenancy agreement. As there was not a written agreement to end tenancy the tenants were required to pay the full amount of rent as of January 1, 2012. I accept the landlords' submission that there were insufficient funds in the tenants' bank account when the rent cheque was presented to the bank on January 3, 2012 as the tenants' bank statements did not include any balance to indicate otherwise.

On the balance of probabilities, I find that it is no coincidence that the electricity was shut off when the landlord's boyfriend was home the same day the landlord had tried to cash the rent cheque and could not. I find, on the balance of probabilities, the landlord and her boyfriend were in communication about the cheque before the power was turned off.

Although the landlord denied that her boyfriend acted as an agent for her, it is interesting to note that in a letter of November 3, 2011 the tenant requested that the landlord' boyfriend stop participating in the unit inspections. I also heard that the

landlord's boyfriend had approached the tenants about their loud music on occasion. Finally, comments made to the tenants by the landlord's boyfriend on January 3, 2012 indicate the landlord's boyfriend was retaliating on behalf of the landlord. Therefore, I find it reasonable that the tenants were of the belief the landlord's boyfriend had turned off the electricity and blocked the driveway on behalf of the landlord.

Of further consideration is the fact the landlord turned the power off again, herself, later in the evening when she was disturbed by the tenants making noise. It was appear that when the tenants do not conduct themselves in a manner the landlord desires the landlord's knee-jerk reaction is to turn off the power.

While I appreciate the landlords were highly frustrated by the tenants' refusal to sign the Mutual Agreement to End Tenancy, engage in discussions with the landlords, and failure to have sufficient funds in their bank account to cover the rent payment, the landlords' legal remedies are provided in the Act and the remedies did not include termination of an essential service. In fact, there is no provision in the Act that provides that frustration with a tenant's conduct is a basis for terminating an essential service.

Termination of an essential service by the landlord is prohibited under the Act. An essential service is one that is "essential to the tenant's use of the rental unit as living accommodation". I consider electricity to be an essential service.

Restricting a tenant's ability to come and go from the residential property is also in violation of the Act.

Given the lack of electricity for several hours on January 3, 2012 on various different occasions, I cannot imagine the tenants would have any reasonable degree of assurance the electricity would not be terminated during the remainder of their tenancy had they stayed.

Considering the above, I order the tenancy ended January 3, 2012. I make this order pursuant to the authority of section 44(1)(f) which provides that a tenancy ends when: "the director orders that the tenancy is ended."

Having ordered the tenancy ended on January 3, 2012 I hold the tenants responsible for paying rent for January 1 – 3, 2012 which I calculate to be \$116.13 [\$1,200.00 x 3/31 days].

Utilities

As I have ordered the tenancy ended as of January 3, 2012 I hold the tenants responsible for paying for 2/3 of the hydro and gas bills, as per their tenancy agreement, for the days up to and including January 3, 2012.

Since the billing periods do not fall on January 3, 2012 I have estimated the tenants' obligation by pro-rating the applicable bills. I calculate the tenants owe the landlords the following amounts for utilities:

Gas:

\$81.02 owed for period up to December 13, 2011; plus,
\$68.56 [$\$116.55 \times 20/34$ days] for December 14, 2011 through January 3, 2012;
equals \$149.58.

Hydro:

\$179.28 [$\$233.84 \times 46/60$ days] for November 18, 2011 through January 3, 2012.

Damages and cleaning

Both parties signed the move-out inspection report and I have relied upon it as the best evidence of the condition of the rental unit at the end of the tenancy. I make the following awards for each of the items claimed by the landlord.

Blinds: The move-out condition inspection report indicates the living room blind had a "broken/cut string". During the hearing the landlord argued it was cut and the tenant argued it was broken from wear and tear. Having heard the blinds were approximately five years old I find it just as likely the string was broken after years of use. I also note the landlord's repair invoice does not indicate the string was cut. Since the applicant bears the burden of proof I find the proof insufficient to conclude the tenants cut the string and I dismiss this portion of the landlords' claim.

Vertical blinds: The condition inspection report indicates two sections of the living room vertical blinds were down at the time of the inspection; however, the tenants submitted that two veins were down at the beginning of the tenancy. Upon review of the move-in inspection report prepared by the landlord at the commencement of the tenancy I note that the report is silent with respect to the condition of the window coverings. In the absence of other evidence as to the condition of the blinds at the beginning of the tenancy I find I am not satisfied the landlords have proven the tenants are responsible for the damaged blinds. Therefore, I dismiss this portion of the landlords' claim.

Carpet cleaning: The landlord provided evidence that the carpets were professionally cleaned after the tenancy ended and the condition inspection report indicates that the carpets were stained in areas. I find the landlords' evidence stronger than that of the tenant's verbal submission that she cleaned the carpets herself. The landlord also submitted that cleaning was necessary to reduce odour from the carpeting. I accept that the carpets may have had an odour based upon the landlord's photographs and previous communication to the tenants that depict the tenants' sanitary standards as being poor. Therefore, I award the carpet cleaning cost of \$252.00 to the landlords.

Suite cleaning: The move-out inspection report indicates several items required cleaning and I accept this evidence, in conjunction with the photographs and cleaning invoice, as sufficient evidence that the landlord's incurred costs to have the rental unit cleaned. Therefore, I award the landlords the cleaning costs of \$252.00

Painting: The landlord is claiming the cost of painting over patched holes, drips marks that were not removed with cleaning, and various ink or marker stains. I find the inspection report, and photographs substantiate the damage and the landlord's monetary claim is very reasonable considering there is no claim for the landlord's time spent painting. Therefore, the landlords request for compensation of \$163.97 is granted.

Monetary Order

As the landlords were partially successful in this application I award the landlords one-half of the filing fee paid, or \$25.00. Other than the filing fee there are no other costs associated to dispute resolution that are recoverable. Therefore, the landlords' request to recover the cost of developing photographs is denied.

In light of the above, I authorize the landlords to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlords and I provide the landlords with a Monetary Order for the balance, calculated as follows:

Unpaid rent	\$ 116.13
Utilities (\$149.58 + \$179.28)	328.86
Carpet cleaning	252.00
General cleaning	252.00
Painting	163.97

Filing fee (one-half)	25.00
Less: security deposit	<u>(600.00)</u>
Monetary Order for landlords	\$ 537.96

The landlords must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlords have been authorized to retain the tenants' security deposit and have been provided a Monetary Order for the balance of \$537.96 to serve 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: May 23, 2012.

Residential Tenancy Branch