



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MNR, MNSD, MNDC, FF

For the tenants – MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord has applied for a Monetary Order for unpaid rent and utilities; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants have applied for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; an Order to recover their security and pet deposit and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

The parties advised there was an error in the spelling of the tenants' last names on the landlords application. The parties did not raise any objections to the error being corrected and this has now been amended.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security and pet deposits?
- Are the tenants entitled to recover their security and pet deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy started on March 01, 2012 although the tenants did not move in until March 09, 2012. This is a fixed term tenancy which was due to expire on February 28, 2013. The tenancy ended on April 30, 2012. Rent for this unit was \$1,600.00 plus 75 percent of utilities for oil, water and Hydro. Rent was due on the first day of each month in advance. The tenants paid security deposit of \$800.00 on February 10, 2012 and a pet deposit of \$800.00 on March 09, 2012. Both inspections were completed at the start and end of the tenancy and the tenants gave the landlord there forwarding address in writing on April 30, 2012.

The landlord's application

The landlord testifies that the tenants owe utilities of \$302.00, a breakdown of the bills was given to the tenants and the tenants gave the landlord a cheque to cover this sum which had been incorrectly filled in. The tenants gave the landlord another cheque but the landlord testifies she was unable to cash that cheque at the tenants' bank.

The landlord testifies that the tenants gave written notice to end the tenancy dated March 28, 2012. This notice has an effective date of May 31, 2012. However the tenants moved from the unit on April 30, 2012 and failed to pay rent for May. The

landlord testifies that she placed advertisements to attempt to re-rent the house for May but it was not re-rented until June 01, 2012. The landlord seeks to recover the rent for May of \$1,600.00.

The landlord refers to the last page of the tenancy agreement and states under clause 44 where the landlord has hand written 'two months notice to vacate required' does not apply to the fixed term tenancy but was added to protect the tenants and landlords if either party wished to end the tenancy when it had reverted to a month to month tenancy. At that time the party would be required to give two months notice instead of the allowable one months notice.

The landlord testifies that the tenancy agreement has a clause that states if the tenants break the fixed term lease a fee of \$1,600.00 will be charged for liquidated damages and not as a penalty. The liquidated damages cover the landlord's costs of re-renting the unit. The landlord testifies that she incurred costs for her time and effort to re-rent the unit and although the landlord used free advertising sites the landlord did incur a cost of \$108.00 for three credit checks completed on prospective tenants.

The landlord requests an order to keep the tenants security and pet deposit to offset against the unpaid rent and utilities.

The tenants do not dispute that they owe the sum of \$320.00 for utilities and state the landlord should not have had any problem cashing the second cheque as it is the same account the tenants used to pay the rent. The tenants request that the landlord returns both cheques to the tenants.

The tenants dispute the landlords claim for unpaid rent for May, 2012. The tenants' testify that the tenancy agreement states they can give two months notice to end the tenancy and the landlord had explained to the tenants at the outset of the tenancy that if they did not like the property they could vacate after giving two months notice. The tenants' state this term in the tenancy agreement is unclear if the landlord is now

insisting it only applies after the fixed term had expired. The tenants also dispute the landlords claim for liquidated damages as they state they were entitled to end the tenancy after providing two months notice.

The tenants' testify that they had discussed with the landlord about the landlord keeping their security and pet deposit to cover rent for May, 2012. The tenant MN testifies that he signed the move out condition inspection report stating the landlord could keep the deposits

The tenants' application.

The tenants testify that they moved from the east coast of Canada and had to have the tenants' sister attend the move in inspection of the house. When they moved into the house they found many deficiencies that were not noted on the inspection report. The tenants state there were problems with the deck being unsafe and spongy, there was a mice or rat infestation and they found droppings, poison and rodent holes, there the front railing on the steps was broken; and there was a plastic pipe coming out of a hole in the ceiling which took water from the deck to the washer drain and this hole was damp and mouldy; there was no ventilation in the bathrooms and the window and skylight could not be opened.

The tenants' testify that they verbally told the landlord of their concerns and then put these concerns in writing. The tenants' testify that one of their daughters has a brain tumour and is legally blind and the house had to be safe for her. The tenants state that the landlord did send an electrician to the house to look at the problems with the plugs not working, the breakers blowing and the breakers getting hot. The tenants state they had to run extension cords from workable plugs to run things such as their television and computers. If more than one item was plugged in the breakers would trip. The landlord's electrician came and removed more of the outlets and the problem remained. The tenants' testify that the house came with an electric fireplace and the landlord told them not to use it but to use oil heating instead.

The tenants' testify that the landlord did send men to the house to mend the deck however they just put railing up that restricted the tenants access to the whole deck. The lower front deck was in sections and was not safe or sturdy. The front railing for the steps was repaired by the landlord by putting a broom handle in to support the railing and the landlord put some rat poison in the basement suite. The tenants testify that when he spoke to the landlord about the hole and plastic pipe in the ceiling the landlord informed the tenant that it was none of the tenants concern.

The tenants' testify that the landlord did not address their concerns or make repairs in a timely manner so the tenants then gave the landlord notice to vacate the rental unit.

The landlord disputes the tenants claim, the landlord testifies that the tenants did not complain until March 24, 2012 when the landlord received an e-mail from the tenants saying they were going to move out due to deficiencies in the house. On March 26, the landlord testifies that she gave the tenants notice of entry for the electrician to look at the problem on March 28. The electrician came to the house and changed two plugs. The landlord has provided a letter in evidence from the electrician stating the electrical outlets in the living room are to an operational standard. The landlord testifies that this is an older house with 100 amps and it is the tenants who are overloading the electrical system by using space heaters. The landlord testifies that the electrician went back on April 05 to check and said heating units had been plugged in.

The landlord testifies that the tenants were only there for two weeks before they gave notice because they could not operate their home care business caring for sick and disabled children. The landlord testifies that the tenant LN informed the landlord that they could not get a licence because the house did not have a sprinkler system and other specialist equipment needed to care for children.

The landlord testifies that this building consists of two duplexes. The tenants rent the upper portion and a bachelor suite is rented out downstairs. That tenant has lived in the bachelor suite for a year and informed the landlord that there has been no rodent activity and the upper tenants have complained about everything since they moved in.

The landlord testifies that she still placed mouse traps down but has seen no trace of rodents

The landlord disputes the tenants' photographs and states she does not recognise some of the rooms in the photographs and one picture has a date of 2007 on it. The landlord testifies that the move in condition inspection report signed by an agent of the tenants shows the property to be in a good condition.

The landlord testifies that the deck was replaced with soft eco tiles and that is why it may feel spongy. The landlord agrees they did build a deck within a deck to make the area safe for the tenants' children that they care for. The landlord testifies that they addressed the tenants' concerns by bringing in professional trades to carry out any required work but some of these scheduled appointments happened after the tenants had moved out. The landlord states the unit is only required to have one smoke detector as it is on one level.

The landlord testifies that the tenants said they could not use the den as the carpet had a pet urine smell. The landlord testifies that the previous tenants did not have pets and the carpet had been cleaned and deodorized. The landlord testifies that she had scheduled inspections to deal with all the tenants concerns but the tenants moved out before all these inspections could take place. The landlord refers to her photographs showing the property.

The tenants dispute the landlord's testimony. The tenants' testify that they were not operating a business caring for sick or disabled children. The tenants state their foster daughter has a brain tumour and is blind but does not need specialist equipment. The tenants' testify that the photographs taken are of the rental house and the tenants forget to charge the date setting on the camera before taking the pictures. The tenants refer to their photographic evidence and state these photographs show the poor condition of the house. The tenants' state the landlords photographs provided showing the outside of

the house does not show the tenants access to the house as their access was at the back.

The tenants seek a Monetary Order for compensation of two months' rent of \$3,200.00 for a loss of quiet enjoyment of the house with trades people and viewings for four hours a day and due to the work required in the house. The tenants also seek to recover \$170.30 for their costs incurred to clean the carpets and \$200.00 for cleaning costs. The tenants also seek now to recover their security and pet deposit.

The landlord cross examines the tenants and asks why the tenant is denying caring for sick children. The tenant LN states that she never informed the landlord she was running a business but just that the tenant was trying to get help for her daughter as there were no emergency exists in the home.

The tenants call their witness who is one of the tenants' adult daughters. The witness testifies that she took the photographs of the home and the pictures showing a rodent hole and droppings were in the corner of the den. The witness states that she helped her parents clean the house and observed rodent dropping and pink rat poison underneath appliances when they were pulled out. There were also rodent dropping in some of the cupboards

The landlord cross examines this witness and asks the witness when the pictures were taken. The witness replies when they were cleaning the house to move out. The landlord asks the witness how she knew it was rat poison. The witness replies that she recognised it as she has worked in the cleaning industry.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness.

The landlords claim

With regard to the landlords claim for unpaid rent and utilities; the tenants agree they owe the sum of **\$302.00** for utilities therefore I find the landlord has established their claim to recover this sum from the tenants. The tenants dispute that they are responsible for rent for May, 2011 as they had given the landlord written permission to keep their security and pet deposits. However, the tenants only agreed in writing that the landlord could keep the security deposit and the pet deposit was not mentioned. Therefore I find the landlord is entitled to recover rent for May, 2012 to the sum of **\$1,600.00**.

With regard to the landlords claim for liquidated damages of \$1,600.00; the tenants argue that they were entitled to end the tenancy after giving the landlord two months notice. The landlord argues that this term for liquidated damages in the agreement applied after the fixed term had ended. I find that in the matter of the term in the tenancy agreement, it would be reasonable for the tenants to read this term and determine that they were entitled to end the tenancy after giving the landlord two months written notice as the term is ambiguous in its definition and does not state that this is only applicable after the fixed term has expired. Consequently, I find the landlord is not entitled to apply a charge of \$1,600.00 to the tenants for liquidated damages in ending the tenancy before the end of the fixed term as this term in the tenancy agreement allows the tenant to give the landlord two month notice to end the fixed term.

With regard to the landlords claim to keep the security deposit and pet deposit, I find the landlord is entitled to keep both deposits to a total sum of \$1,600.00 pursuant to s. 38(4)(b) of the *Act*.

The landlord is entitled to a Monetary Order as follows:

Unpaid rent for May, 2012	\$1,600.00
Unpaid utilities	\$302.00
subtotal	\$1,902.00

Less security and pet deposit	(-\$1,600.00)
Total amount due to the landlord	\$302.00

The tenants claim

With regard to the tenants claim for compensation for loss of quite enjoyment and to recover the carpet cleaning costs, cleaning costs and their security and pet deposits; In order to prove a claim for loss of quite enjoyment a tenant must show that the landlord has interfered with the tenants

(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 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find the tenants have not met the burden of proof that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased or that there has been frequent and ongoing interference by the landlord. Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment as it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

I find the tenants raised concerns with the landlord about repairs and the condition of the house and the landlord acted in accordance with the tenants concerns. I further find a landlord is entitled to responsible access to a rental unit in order to show the unit to prospective tenants. Consequently the tenants claims for compensation due to the contractors and viewing is denied.

However, I find some of the tenants concerns to be justified given the documentary evidence provided especially with regard to safety concerns with their daughter and the obvious rodent problem. Therefore, I find the condition of some areas of the unit would warrant an order for compensation as a landlord has a legal obligation under s. 32 of the *Act* to ensure a rental unit is rented in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Consequently I find the tenants are entitled to compensation of \$200.00 a month for each month of their tenancy to a total sum of **\$400.00**.

The tenants have also applied to recover the sum of \$170.30 and \$200.00 for cleaning the unit. I refer the tenants to the Residential Tenancy Policy Guidelines #1 which states that 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. As the tenants did have a pet which was not caged then the tenants are required to clean the carpets at the end of the tenancy regardless of the length. The tenants have provided no evidence to show the carpet had to be cleaned due to a pet urine smell. The tenants are also expected to clean the unit at the end of the tenancy regardless of how long they live in the unit. Therefore this section of the tenants claim is dismissed. .

With regard to the tenants claim to recover the security and pet deposit; The tenants had agreed in writing that the landlord could keep the security deposit of \$800.00 and the landlord has been ordered to keep the pet and security deposit. Therefore this section of the tenants claim is dismissed.

As both parties have been partially successful with their claim I find each party must bear the cost of filing their own applications.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord has been awarded the total sum of \$1,902.00. The landlord has been ordered to keep the tenants security and pet deposit of \$1,600.00 leaving a balance due of \$302.00.

I HEREBY FIND in partial favor of the tenants monetary claim. The tenants have been awarded the sum of \$400.00. The landlord's monetary award has been offset against the tenants' monetary award leaving a balance of \$98.00. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$98.00**. The order must be served on the landlord and is enforceable through the Provincial Court 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: July 13, 2012.

Residential Tenancy Branch