



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlords to keep all or part of the tenants' security 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.

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

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent or utilities?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep all or part of the security deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on September 01, 2013 although the tenants took possession of the unit a week earlier with permission of the previous tenant. Rent for this unit

was \$1,350.00 per month and was due on the 1st of each month. The tenants paid a security deposit of \$675.00 on August 27, 2013. Both parties attended a move in and a move out condition inspection of the unit. The tenants gave a forwarding address as the dispute unit's address and stated that they were having their mail forwarded.

The landlord testified that the tenants failed to provide proper notice to end the tenancy. The tenants wrote to the landlords on January 08, 2014 giving notice to end the tenancy effective on January 31, 2014. The landlord testified that the unit was not re-rented until February 15, 2014. Therefore the landlords seek a loss of rental income from February 01 to February 15 of \$675.00.

The landlord testified that the tenants were responsible for the water bill. The bill for the period of three months from October to the end of December, 2013 was not paid by the tenants. The landlord seeks to recover the amount of this bill of \$298.43. The landlord testified that the tenants also failed to pay the bill for water for January to February 15, 2014. The landlord has requested an amount of \$54.24 as a prorated amount for this bill and has estimated this amount based on previous bills.

The landlord testified that the tenants failed to have the carpets cleaned at the end of the tenancy. The carpets were brand new not long after the tenants moved into the unit as the landlord had replaced the old carpets when the tenants complained that they smelt. The landlord testified that the tenants had an independent agreement with the previous tenant that they would pay to have the carpets cleaned when they moved into the unit as the previous tenant had allowed the tenants to move in earlier. This agreement was between the previous tenant and these tenants and the landlords had no knowledge of it at the time. The landlords seek to recover the cost of the carpet cleaning and have provided an invoice in evidence showing the cost for cleaning at \$90.00 plus the rental of the carpet cleaner at \$84.51.

The landlord testified that the tenants were given permission to paint a bedroom in the unit as long as the tenants returned it to its original colour when they moved out. The landlord testified that the tenants did comply with this; however, the landlords found paint splashes on the ceiling, baseboards and outlets. The ceiling and baseboards had to be repainted and the landlords seek to recover \$60.00 for this work. An invoice has been provided in evidence.

The landlord testified that the tenants removed two light fixtures; one in a bedroom and one in the family room. These fixtures had to be replaced at a cost of \$25.72. The landlords have provided a receipt in evidence. The landlord testified that during the move out inspection it was not noticed that the light fixtures were missing and was not recorded on the inspection report.

The landlord testified that the tenants refused to return the mailbox key and though the tenants later stated that they had handed it in at Canada Post, Canada Post had no record of it. The mailbox had to have the lock changed on the recommendation of Canada Post and new keys were purchased. The landlords seek to recover \$30.45 for this work and have provided a receipt from Canada Post in evidence.

The landlord testified that at the start of the tenancy there was a swing set in the garden. The tenants removed this at the end of the tenancy and informed the landlords that the previous tenant had given it to the tenants. The landlord refers to a letter from the previous tenant which states that they did not give the tenants permission to keep the swing set. The landlord testified that the swing set was approximately seven years old. The landlords have provided an estimate showing a similar swing set in evidence. The landlords seek to recover the cost of a new swing set of 223.99 plus \$30.00 to assemble it, to an amount of \$253.99.

The landlords seek an Order allowing the landlords to apply the security deposit to the landlords' monetary claim. The landlords also seek to recover the \$50.00 filing fee from the tenants.

The tenant disputes the landlords' claims. The tenant testified that they spoke to the landlord about giving notice to end the tenancy and were told it was fine as long as the landlords could re-rent the unit by February 01, 2014. During the move out inspection at the end of the tenancy the landlord did not advise the tenants that the tenants owed rent for February.

The tenant testified that they did intend to pay the utilities as soon as the landlords returned the security deposit. As the landlords have not returned the security deposit the tenant testified that they were unable to pay the utilities. The tenant agrees that they owe the amount of \$298.43 and utilities for January of \$88.46. The tenants dispute that they owe any utilities for the first half of February.

The tenant testified that they did not clean the carpets at the end of the tenancy as the carpets were new and did not require cleaning. The tenant testified that they had reached an agreement with the previous tenant that the tenants would clean the carpets when they moved into the unit as the previous tenants had allowed the tenants to occupy the unit before the first of September. However, as the carpets smelt so badly, even after cleaning, they had to be replaced by the landlords. The tenant testified that the landlords should have paid the tenants to have the carpets cleaned from the previous tenant's security deposit.

The tenant agrees that there were some paint splashes left on the ceiling and baseboards after the tenants had painted the bedroom.

The tenant testified that they did not remove any light fixtures from the unit. The tenant testified that they landlord has not documented any missing light fixtures on the inspection report and the lights were in place at the end of the tenancy.

The tenant testified that they changed their forwarding address with Canada Post and had their mail redirected. The tenant testified that it was someone from Canada Post who told the tenants that they must return the key to Canada Post. The tenant testified that this was done two weeks prior to the tenants moving out of the unit.

The tenant testified that the swing set was given to the tenants by the landlords at the start of the tenancy. The landlords had informed the tenants that they could either keep it or the landlords would dispose of it. The tenant testified that the swing set was old and rusty and was never used by the tenants and was given to goodwill at the end of their tenancy for scrap metal.

The landlord cross examined the tenant and asked the tenant when the landlord had said the tenants could have the swing set. The tenant responded that this was discussed at the start of the tenancy.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords' claim for unpaid rent for the first half of February, 2014; I refer the parties to s.45(1) of the *Act* which states:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenants notice was dated January 08, 2014 and the tenancy ended on January 31, 2014. As the tenants did not give proper notice as required under s. 45(1) of the *Act* and the rental unit was not rented until February 15, 2014; it is my decision that the landlords are entitled to recover a loss of rent from February 01 to February 15, 2014 of **\$675.00**.

With regard to the landlords' claim for unpaid utilities; I am satisfied from the undisputed evidence before me that the tenants owe utilities for the last three months of 2013 to an amount of **\$298.43**. I am also satisfied that the landlords are entitled to recover unpaid utilities of **\$88.46** for January, 2014. However, as the tenants were not residing in the unit from February 01, 2014 then the tenants did not use any utilities and the landlord is not entitled to recover charges for water or sewage for this period. As the landlords had estimated the amount owed prior to receiving a copy of the bill this section of the landlords' claim has now been amended from \$54.24 to \$88.46.

With regard to the landlords' claim for damage to the unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

With this test in mind I find a tenant is required to steam clean and shampoo a carpet if a tenancy is longer than 12 months or if the carpet is left stained. The move out condition inspection report states that the carpets are not cleaned but does not give sufficient evidence to show that the carpets were left dirty. The tenancy was less than 12 months. Therefore, without further corroborating evidence to support the landlords' claim that the carpets were left stained I must deny the landlords' claim for carpet cleaning and the rental of the carpet cleaning machine. This section of the landlords' claim is therefore dismissed.

With regard to the landlords' claim for labour costs to touch up the paint on the ceiling and baseboards; the tenant attending does not dispute this section of the landlords' claim. Consequently I find in favor of the landlords' claim for **\$60.00**.

With regard to the landlords' claim for the light fixtures; The landlords must provide sufficient evidence to meet the burden of proof that the tenants removed these light fixtures from the unit. There is no mention of this in the body of the move out inspection report and the tenant has disputed that the light fixtures were removed by the tenants. Consequently, without any corroborating evidence it is my decision that the landlords have insufficient evidence to meet the burden of proof in this matter and this section of the landlords' claim is dismissed.

With regard to the landlords' claim for the new lock and keys for the mailbox; a tenant is required to return the mailbox keys to the landlord at the end of the tenancy. The tenants have provided insufficient evidence to show that the keys were returned to Canada Post and therefore I find in favour of the landlords' claim for **\$30.45**.

With regard to the landlords' claim for the replacement swing set. The parties contradict each other over the matter of permission for the tenants to keep the swing set. I find even if the previous tenant or the landlord had said the tenant could keep the swing set this may not have meant the tenants could remove it from the property when they moved out but rather keep it for their use during the tenancy. However, the landlord agrees that the swing set is approximately seven years old. The tenant has testified that the swing set was very rusty. Without corroborating evidence from the landlords to show that the swing set was in a reasonably good condition I must deduct an amount for depreciation of the swing set. The useful life guide under the Residential Tenancy Policy Guidelines #40 shows the useful life of playground equipment as 10 years. As this swing set was at least seven years old then I have deducted an amount of 70

percent for depreciation. The landlords are therefore entitled to recover the amount of **\$67.19**. I am not prepared to award the landlords an amount for assembly of a swing set as the landlords have not purchased a swing set and therefore have not incurred this cost.

I Order the landlords to retain the security deposit of **\$675.00** pursuant to s. 38(4)(b) of the *Act*. This amount has been offset against the landlords' monetary claim. I further find the landlords are entitled to recover the **\$50.00** filing fee pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Loss of rent for 15 days in February, 2014	\$675.00
Unpaid utilities	\$386.89
Touch up painting	\$60.00
Mail box lock and keys	\$30.45
Swing set	\$67.19
Filing fee	\$50.00
Less security deposit	(-\$675.00)
Total amount due to the landlord	\$594.53

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for \$594.53. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced 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: June 04, 2014

Residential Tenancy Branch