



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's 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 landlord to keep all or part of the tenants' security and pet deposit; and to recover the filing fee from the tenants for the cost of this application. At the outset of the hearing the landlord withdrew his application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other 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. The parties 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

- Is the landlord entitled to a Monetary Order for unpaid utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord permitted to keep all or part of the security and pet deposit?

Background and Evidence

The parties agreed that this tenancy started on March 15, 2013 for a fixed term tenancy that ended on March 15, 2014. The parties agreed to extend the tenancy until March 30, 2014. Rent for this unit was \$2,000.00 a month due on the 15th day of each month. The tenants paid a security deposit of \$1,000.00 and a pet deposit of \$1000.00 at the start of the tenancy which is held in trust by the landlord. The parties also agreed that the landlord did a walk through inspection of the property at the start and end of the tenancy but did not complete condition inspection reports showing the condition of the rental unit. The tenants provided a forwarding address to the landlord on April 02, 2014.

The landlord testified that the tenancy agreement signed by both parties did not include water or any other utilities. The tenants failed to pay the City water and sewage bill. This bill was for a total amount of \$1,128.88 however as part of the bill contained a charge for garbage the landlord agreed to pay this as it was included in the rental agreement. The garbage charge was \$71.25; therefore, the landlord seeks to recover \$1,057.63 from the tenants for water and sewage. A copy of the water bill has been provided in documentary evidence.

The landlord testified that the tenants did not return the key to the basement bedroom door. The landlord changed the lock to this door and seeks to recover the amount of \$75.00 for the materials and the landlords labour. The landlord has not provided a receipt in documentary evidence.

The landlord testified that the tenants' dog and the tenants' furniture caused excessive scratches to the hardwood floor in the unit. The flooring was covered in scratches which the landlord had to refinish. The landlord seeks to recover \$185.00 for this work. The landlord has not provided any photographic evidence showing scratches or an invoice for materials used to finish the floor.

The landlord testified that the tenants damaged a heat duct in the small bedroom. The landlord seeks to recover \$20.00 for the replacement cover. The landlord has provided a photograph of the duct but no receipt for the replacement cover in documentary evidence.

The landlord testified that the tenants caused damage to the walls where they left between 80 or 90 nails in the walls from pictures. There was also a hole in the wall approximately one inch by one and a half inches. The landlord testified that as he is a handyman he repaired and repainted the walls and seeks \$190.00 for this labour and \$415.00 for paint and supplies. The landlord testified that the unit was newly renovated in 2011 and painted at that time. The landlord has provided receipts for paint and supplies in documentary evidence but no photographic evidence of the condition of the walls with the exception of a photograph of the small hole.

The landlord testified that the unit was supplied with a washing machine at the start of the tenancy which was two years old. The tenants signed an addendum to the tenancy agreement which stated that they were responsible for any repairs to appliances. The washer broke down after a couple of weeks and the landlord went to repair it. The washer broke down again and the tenants were told they would have to pay to have it repaired. The tenants decided to buy a new washer which they did leave at the rental unit when they left. The landlord testified that after the tenants left the landlord found the new washer made a lot of noise. The landlord seeks to recover the amount of \$295.00 for a repair to the washer. The landlord has not provided a receipt or invoice in documentary evidence.

The landlord testified that he had originally claimed \$150.00 for the basement exhaust hood fan; however the landlord found later that this fan was working so the landlord withdraws this section of his claim.

The landlord seeks an Order to keep the security and pet deposit of \$2,000.00 and seeks to recover the \$50.00 filing fee from the tenants.

The tenants agreed that they had not paid for water and sewage as they thought this was included in the rent. The tenants raise no objections to the amount of \$1,057.63 being deducted from their security and pet deposit.

The tenants testified that they did not return the key to the basement bedroom door but they do dispute the amount claimed by the landlord of \$75.00 and find this claim is extravagant.

The tenants disputed the landlord's claim that their dog and furniture caused excessive scratches on the hardwood floor that went beyond normal wear and tear. The tenants testified that the landlord was aware the tenants had a medium sized dog as the landlord was at the unit many times. The tenants testified that the landlord has provided no evidence that the hardwood flooring was scratched beyond normal wear and tear.

The tenants disputed that they left a duct cover broken and stated that this was not pointed out during the walk through at the end of the tenancy. The tenants question when the landlord took the photographs he has provided in evidence as they are not dated and new tenants moved into the unit on the same day they moved out.

The tenants disputed the landlord's claim that they are responsible for excessive nail holes in the walls or a hole in the wall. The tenants testified that they were not given instructions by the landlord as to what picture hangers to use but only used small picture hooks and nails or used existing nails left by the previous tenants. The tenants disputed the landlord's claim that the unit was last repainted in 2011 and testified that the unit did not appear to have been painted for years as there were many marks on the walls which the tenants covered with pictures.

The tenants disputed the landlord's claim for the washer. The tenants testified that when they moved into the unit they were told that the washer had been left four years ago by a previous tenant. In July, 2013 the washer started to spark and emitted blue smoke. The tenants called a repairman who said if it was smoking it was likely to be the motor

which could cost hundreds of dollars to repair. The tenants testified as they needed a washer they purchased a new one for \$750.00 from Sears. At the end of the tenancy they left this washer for the landlord and it was in good working order and was still under warranty. The tenants have provided evidence showing the purchase of the new washer.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for unpaid utilities of \$1057.63; at the hearing the tenants did not dispute this section of the landlord's claim as the tenants are now aware that water was not included in the rent as per the tenancy agreement. Consequently, I uphold the landlord's claim for **\$1,057.63**.

With regard to the landlord's claim for damage to the unit, site or property; 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.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of

the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I find the tenants do not dispute that they lost the key to the basement bedroom door but do dispute the amount charged by the landlord for the replacement lock. As the landlord has not provided an invoice or receipt showing the actual amount the new lock cost I must limit the landlord's claim to **\$35.00**.

With regard to the landlord's claim for damage to the hardwood floor; in this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that the tenants caused damage to the hardwood floor that went beyond normal wear and tear. This means that if the landlord's evidence is contradicted by the tenants, the landlord will generally need to provide additional corroborating evidence to satisfy the burden of proof. Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that the tenants caused damage to the hardwood floor that exceeded normal wear and tear. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. Consequently, I dismiss the landlord's claim for repairs to the hardwood floor of \$185.00.

With regard to the landlord's claim for a replacement duct cover. The tenants disputed the landlord's photographic evidence as the photographs are undated. The tenants disputed that they caused damage to this duct cover, the landlord has provided insufficient corroborating evidence to support his claim such as a move in or move out condition inspection report or an invoice showing the actual cost for the replacement cover. Based on the test for damages the landlord's claim for \$20.00 must therefore fail.

With regard to the landlord's claim for repairing and repainting the walls; the landlord has provided one photograph showing a hole in the wall the tenants disputed that this damage was caused during their tenancy. The tenants also disputed the landlord's claim that they used excessive nail holes to hang pictures on the walls and claim that there were already picture nails in the walls when they moved in. Had the landlord completed a move in condition inspection report at the start and end of the tenancy the landlord would have had corroborating evidence to show any damaged caused during the tenancy by the tenants. As the landlord has insufficient corroborating evidence to meet the burden of proof then this section of the landlord's claim for labour and painting supplies of \$605.00 must fail.

With regard to the landlords claim for a repair to a washer; I refer the parties to the Residential Tenancy Policy Guidelines # 1 which states, in part, that Residential Tenancy Agreements must not include terms that contradict the Legislation. For example, the tenant cannot be required as a condition of tenancy to paint the premises or to maintain and repair appliances provided by the landlord. Such a term of the tenancy agreement would not be enforceable. The parties did have an addendum to the tenancy agreement in which the landlord had stipulated that the tenants were responsible for repairs to the appliances. As this is an unconscionable term of the tenancy agreement as set out under the Residential Tenancy Policy Guidelines I find this term is not enforceable. Furthermore, I find the landlord has provided insufficient evidence to show that the tenants caused damage to the original washer through their own actions or neglect or that the washer the tenants purchased and left for the landlord was damaged. Consequently, the landlord's claim for a washer repair for \$295.00 is dismissed.

With regard to the landlord's claim to keep the security and pet deposit; as the landlord has been partially successful with this claim I find the landlord is entitled to keep a portion of these deposits pursuant to s. 38(4)(b) of the *Act*. I further find as the landlord has been partially successful that the landlord is entitled to recover the **\$50.00** filing fee

from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

utilities	\$1,057.63
lock repair	\$35.00
filing fee	\$50.00
Amount due to the landlord	\$1,142.63
Security and pet deposits	(-\$2,000.00)
Total amount due to the tenants	\$857.37

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is permitted to keep **\$1,142.63** from the security and pet deposits. The balance of \$857.37 must be returned to the tenants pursuant to s. 38(6)(b) of the *Act*.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$857.37**. The Order must be served on the landlord. Should the landlord 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: July 30, 2014

Residential Tenancy Branch

