



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for the cost of emergency repairs and for money owed or compensation for damage or loss under the Act.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

On March 19, 2014, an interim decision was made which should be read in conjunction with this decision.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the **relevant** facts and issues in this decision.

Preliminary Matters

Although the tenants witness NK appeared at today's hearing, the tenants failed to comply with my order on March 19, 2014, as they were required to provide the business and contact information for NK as the landlord had questions that they wanted to investigate about the witness. Further, the tenants were ordered to submit the original invoices numbered 454305, 454308, 454316, 454317, and 454320, which they stated they falsified and had in their possession, those receipts were not provided.

Issues to be Decided

Are the tenants entitled to a monetary order to recover the cost of emergency repairs?
Are the tenants entitled to a monetary order for compensation under the Act?

Background and Evidence

The tenancy began on June 23, 2013. Rent in the amount of \$1,300.00 was payable on the first of each month. A security deposit of \$650.00 was paid by the tenants. The rent was later reduced to \$1,200.00 by mutual agreement.

On November 12, 2013, the parties attended a dispute resolution hearing and the landlord's application to end the tenancy early was granted on the basis that the tenants have seriously jeopardized the health or safety or a lawful right or interest of the landlord, and that the tenants have put the landlord's property at significant risk. The landlord was granted an order of possession effective not later than two days after service on the tenants.

The tenants filed an application for dispute resolution on November 29, 2014, which claims as follows:

a.	Animal hospital bill - withdrawn	\$ 449.40
b.	Cost of emergency repairs	\$ 4,006.00
c.	Various plumbing/electrical	\$ 123.95
d.	Home depot – crimper tool	\$ 147.77
e.	Various cleaning supplies/rings and connectors	\$ 379.86
f.	Laundry services	\$ 450.00
g.	Return or rent	\$ 3,200.00
h.	Gas for 5 months	\$ 500.00
i.	Bottled water	\$ 500.00
j.	Filing fee	\$ 100.00
	Total claimed	\$ 9,856.98

Cost of emergency Repairs items b

The tenants testified that since they moved into the rental unit there was one problem after another, leaving them with serious emergency repairs. The tenants stated one week after they moved into the rental unit the jet pump for the well system broke leaving them with no water and after several unsuccessful attempts to contact the landlord, they contacted an independent plumber and the plumber notified them that there were several health and safety issues that needed to be addressed immediately. The tenant stated when he contacted the landlord, he told him to get the well pump system fixed to give the house immediate water.

The tenants testified that once the water was fixed they were unable to use the water because the septic was backing up in the kitchen sinks and toilets. The tenants stated that for the five months they were residing in the rental premises they were unable to use the bathroom or use the water. Filed in evidence are photographs of a septic backup in the rental unit, which the tenants stated were taken in July 2013.

The tenants testified that the plumber/electrician made out two invoices by using their personal invoice book in the amounts of \$600.00 and \$3,406.00. The tenants stated that they no longer have the original receipts for the emergency repairs. The tenants stated they have falsified the receipts which are numbered, #454317, 454307, and 812240, filed as evidence to support their claim of the amounts that were paid in cash to the plumber. The tenants stated however, the exact amounts of \$600.00 and \$3,406.00 were paid to the plumber in cash on those dates.

The witness for the tenants NK testified that he is an electrician and was hired by the tenants on August 22, 2013 to originally fix the dryer and the jet pump that feeds the water to the house. The witness stated that he fixed the jet pump, the pressure tank, built a manifold, and replaced all the electrical for all the ground water system and it took him a total of six weeks to complete the repair and he issued the receipt #464308, to the tenants on August 28, 2013. The receipt was not provided as evidence.

The witness wrote in his witness statement dated October 10, 2013, "Invoice is being processed".

The receipt #454317 submitted as evidence by the tenants indicates it was written and paid for October 5, 2014.

In response, the landlord testified that he was unable to make any inquiries about the tenants witness prior to the hearing as the tenants did not comply with the previous order. The landlord stated that the witness is not an independent contractor as stated, rather he is a friend of the tenants as he has seen them drinking beer on the porch of the rental unit on several occasions. The landlord stated it would not be reasonable for an independent contractor to use a receipt book provided by the tenants.

The landlord testified that the tenants told him that they have been doing work in the basement and they felt they should be reimbursed. The landlord stated the tenants were not given permission to do any work, except for when he was told that the jet pump to the water system was not working properly and he gave the tenants \$275.00 to cover the cost of a new jet pump. The landlord stated there were no further complaints.

The landlord testified that he was not told about the septic backup until after the incident occurred and the cleanup done. The landlord stated he felt sorry for the tenants at that time and offered them a reduction in rent to compensation for their inconvenience. The landlord stated there were no further complaints.

Various plumbing/electrical

The tenant BP testified that they had to purchase various parts to keep the water system running and seek to be reimbursed the amount of \$123.95. Filed in evidence are two invoices in the amount of \$77.05 and \$46.90.

In response, the landlord testified that the receipt for \$46.90 was issued in May 2013, prior to the tenancy commencing. The landlord stated the male tenant works in the construction field and the second receipt was likely for something he purchased for his work as it is date October 2013, which would be after the date of the alleged emergency repair.

Home depot – crimper tool

The tenant BP testified that he withdraws this portion of their claim, because the crimper tool was already claimed in the invoices submitted for the emergency repairs.

In response, the landlord testified that the tenants are not credible, as it would not be reasonable for a tool purchased by the tenants be included in an invoice that was allegedly billed by an independent contractor.

Various cleaning supplies/rings and connectors

The tenants testified that they had to purchase cleaners to clean up after the septic backed up into the basement and had to purchase pex rings. Filed in evidence is a home depot receipt dated September 24, 2013.

In response, the landlords testified that the receipt is not related to the septic backup.

Laundry services

The tenants testified that due the septic backup they had to do a large amount of laundry. Filed in evidence are receipts they paid for having to have their clothing washed.

In response, the landlord testified that the receipts are unrelated to their claim.

Return or rent

The tenants testified that they should be returned a prorated amount of rent for June 2013, and all rent for July 2013 and August 2013 as the rental unit was unlivable.

In response, the landlord testified that he acknowledged there was a problem when the tenancy first commenced and agreed that the rent would be reduced from \$1,300.00 to \$1,200.00 to compensate the tenants for their inconvenience. The landlords stated there were no further reports of septic backup or lack of water.

The tenants acknowledge they agreed to a lower rent as compensation, but feel that was not adequate compensation.

Gas

The tenants testified that they seek to recover the amount of \$5.00 per day for gas, for the five months as they had no toilet and had to drive their vehicle to the local gas station to use their facilities.

The landlord was not present on September 16, 2013, to provide a response.

Bottled water

The tenants testified they purchased \$500.00 for water during their tenancy. The tenants stated they did not keep any of their receipts for water.

The landlord was not present on September 16, 2014, to provide a response.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the tenants have the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Item b - Cost of emergency repairs

Both parties have provided a different version of events. The tenants' version is that an emergency repair was required to be completed to the jet pump and electrical system for a six week period, commencing August 22, 2014. The landlord's version was the only repair that was required was to the jet pump and he gave the tenants the amount of \$275.00 to make the repair. The evidence of the landlord was that the tenant and his friend made further repairs to the rental unit during the tenancy without his consent and now are claiming it was an emergency repair by fabricating evidence. The landlord acknowledged that there was a septic backup. The landlord's evidence was that he was not notified of the problem until after the incident occurred and the clean up was already completed and he provided the tenants compensation in a form of a rent reduction.

In this case, I accept the evidence of the landlord over the tenants that the tenant and his friend made repairs or improvements that were beyond repairing the jet pump, without the permission of the landlord for the following reasons.

- The tenants admitted to fabricating receipts. Although the tenants testified that this was simply to justify their claim as they had lost the originals, I find that to be highly unlikely as it was not until the authenticity of the receipts were questioned by the landlord that this admission was made;
- The tenant and the witness NK evidence was conflicting as the tenants said they paid the amount of \$3,406.00 on October 5, 2013, however, the witness written statement stated that on October 10, 2013, the invoice was being process, which would be reasonable to concluded it had not been created, received or paid;
- The witness NK testified that there was a receipt issued on August 28, 2013; there was no reference in his verbal testimony to any other receipt being issued or paid by the tenants;
- The witness NK testified that he issued receipt 464308. The receipt 454308 the tenants admitted on March 19, 2014, to have falsified and failed to provide that receipt as ordered. Further, I find it would be highly unlikely that majority of the number in these two receipt would be the same and receipt 464308 was submitted as evidence;
- The written statement of NK dated October 10, 2013 acknowledges the invoice was being processed, that would lead me to believe that his company was issuing an invoice. I find it would not be reasonable for NK, to then attend the tenants rental unit an issue an invoice out of the tenants personal invoice book, unless as suggested by the landlord that this is an attempt between two friends

to fabricate a story of an emergency repair to recover the cost of the improvements they completed without written consent of the landlord.

I find that the tenants have failed to provide sufficient evidence to support the cost of emergency repairs. Therefore, I dismiss this portion of the tenants' claim.

Item c- various plumbing/electrical receipts – related to emergency repairs

In this case, the tenants have submitted two receipts for compensation. The first receipt is dated May 3, 2013, for hardware, which the receipt is dated prior to the tenancy commencing and therefore is unrelated. The second receipt is dated October 2, 2013, and the items purchased are from the same store, and the items purchased are hardware and flooring and those items appear unrelated. Further, as the balance of the receipt is for plumbing and electrical items, I find it would not be reasonable for the tenants to be purchasing these items if they hired an independent contractor to do the work. The fact the tenants have attempted to submit receipts that are unrelated makes me question the validity of all receipts provided by the tenants. Therefore, I dismiss the portion of the tenants' claim.

Item d – home depot – crimper tool – related to emergency repairs

Although this portion of the tenants' claim was withdrawn, the evidence of the tenants was that the amount of the crimper tool was also included in the invoices for emergency repairs under item b. I find the evidence of the tenants' support that the amount claimed for emergency repairs is fabricated, as it would not be reasonable for an independent contractor to include a tool that was purchased by the tenant if the amount claimed was genuine.

Various cleaning supplies/rings and connectors

I dismiss this portion of the tenants claim as the validity of all receipts by the tenants are questionable and there is no way for me determined if these receipt are specifically related to any incident as they are dated September 24, 2014 and no evidence was presented of any significant event occurring on that date.

Laundry services

I dismiss this portion of the tenants' claim, as the validity of all receipts by the tenants are questionable and there is no way for me determined if these hand written laundry receipt are genuine, as it is just a likely they were fabricated.

Return or rent

In this case, the parties agreed that the rent was reduced by agreement for the tenants having problems with the water jet pump and the septic backup at the start of the tenancy. That agreement is binding on the parties. The fact the tenants' change their

position after they were evicted from the rental premises is merely retaliatory. Therefore, I dismiss this portion of their claim.

Gas for 5 months

In this case, the tenants are claiming the amount of \$5.00 a day for gas. The evidence of the tenants was that they had to drive to the gas station every time they wanted to use the bathroom for five months. I find that to be highly unlikely and there is no documentary evidence to support their claim. Therefore, I dismiss this portion of their claim.

Bottled water

In this case, the evidence of the tenants was that they were without water for five months and had to purchase bottled water for themselves and their ten dogs. I find that highly unlikely and there is no documentary evidence to support their claim. Therefore, I dismiss this portion of their claim.

In light of the above, I find the tenants' application must be dismissed without leave to reapply.

Conclusion

The tenants' application is dismissed without leave to reapply.

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: October 6, 2014

Residential Tenancy Branch

