



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MND MNR MNSD MNDC O FF
MNDC MNSD O FF – Tenants' Application

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

The Tenants filed their initial application May 11, 2015, seeking the return of double their security and pet deposits. The Tenants' application was scheduled to be heard at the same time as the Landlord's application as a cross application because the Landlord had filed seeking, among other things, to keep the security and pet deposits.

After the Tenants' application was filed the Tenants amended their application on August 21, 2015. The Tenants' amended application was for an additional \$6,149.20 for compensation pertaining to items that were not directly related to the Landlord's claims.

Upon review of the Tenants' amended application I have determined that I will not deal with all the dispute issues the Tenants have placed on their amended application. Not all the claims listed on the Tenants' amended application are sufficiently related to the main issues listed on the Landlord's application. Therefore, I will deal with the Tenants' initial request for the return of double their security and pet deposits and I dismissed the monetary claim of \$6,149.20 with leave to reapply.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

The Landlord filed her initial application on April 23, 2015 in compliance with section 59 of the Act. Then on August 27, 2015, after the Landlord had received the Tenants' application, the Landlord filed an amended application seeking to increase her monetary claim from \$1,405.92 to \$2,012.80. The Landlord did not include a monetary order worksheet and did not include a description of why the additional \$606.88 was being claimed. Rather, it appeared to me that the Landlord was simply increasing her claim in retaliation to the Tenants' claim.

After review of the foregoing and the Landlord's amended application, I concluded that the Landlord's amended application did not meet the requirements of section 59(2) of the Act.

Accordingly, the additional amounts claimed on the amended application were dismissed, without leave to reapply and I proceeded to hear the matters pertaining to the Landlord's initial claim for \$1,405.92.

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenants.

On April 23, 2015 the Landlord filed seeking to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or Utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; for other reasons; and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed their initial application May 11, 2015 seeking to obtain the return of their security and pet deposits, for other reasons, and to recover the cost of the filing fee from the Landlord for their application.

The hearing was conducted via teleconference and was attended by the Landlord and both Tenants. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each person was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. After a detailed review of the evidence submitted by each party, each person acknowledged receipt of evidence served by the other and no issues were raised regarding service or receipt of that evidence.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord met the burden of proof to be awarded monetary compensation?
2. Have the Tenants proven entitlement to monetary compensation for the return of double their security and pet deposits?

Background and Evidence

Undisputed Evidence

These parties have attended numerous hours at dispute resolution hearings with the RTB regarding this tenancy. Those hearings resulted in the issuance of six written Decisions

between January 3, 2014 and March 5, 2015. Those Decision dates and file numbers are listed on the front page of this Decision.

The parties entered into subsequent written tenancy agreements which began on February 15, 2012. Rent was payable on the 15th of each month and started at \$2,200.00 per month. The rent was later increased to \$2,350.00. On February 14, 2012 the Tenants paid \$1,100.00 as the security deposit plus \$1,100.00 as the pet Deposit.

As per the written tenancy agreements, the Tenants were required to pay 1/3 of each utility which included hydro; natural gas; and the municipal metered bill. No move in or move out condition inspection report forms were completed by the Landlord.

The March 5, 2015 Decision upheld the Landlord's 2 Month Notice to end tenancy issued for landlord's use. The Landlord was issued an Order of Possession effective April 15, 2015.

The Tenants vacated the rental on April 15, 2015, in the presence of police who were requested to attend the rental unit during the move out in order to keep the peace. The Landlord was provided with the Tenants' forwarding address in writing on April 15, 2015, in the presence of the police officer.

A copy of the police General Occurrence report was submitted into evidence by the Tenants and stated as follows:

On 2015-04-15 at 1206 hrs [male Tenant's name] called [police department name] to request a stand by to keep the peace while his landlord [Landlord's name] did a walk through of his suite, [rental unit address]. Cst [Constable's name] attended and stood by. [Landlord's name] did not find any damage. The walk through was completed without incident. [Constable's initials]

[Reproduced as written excluding names and addresses as indicated in square brackets]

The Tenants paid their full rent that was due on February 15, 2015; however, they did not pay rent on March 15, 2015 for the last month of their tenancy. The Tenants did not pay the Landlord for utility bills pertaining to invoices received after February 1, 2015.

In the February 13, 2015 Decision the Arbitrator wrote the following on page 7 paragraph 1:

I have confirmed in this decision that the landlord is obliged to perform the repairs as directed in the August 13, 2014 decision. I have granted the tenants a rent reduction of \$200.00 per month commencing March 1, 2015 and continuing for each subsequent month until such time as the landlord has had all of the water damage in the "wine room" wall remediated by a qualified contractor.

[Reproduced as written]

Landlord's Submission

The Landlord submitted evidence that the Tenants had previously been served copies of most of the utility bills prior to March 12, 2015. The remaining bills were served upon the Tenants in the Landlord's subsequent evidence packages. Although the Landlord's application listed a claim of \$1,405.90 she testified that her claim was comprised of the following:

1. Unpaid natural gas utilities as per the invoices submitted into evidence as follows:

- 1/3 of \$182.59 Jan 9, 2015 – Feb 5, 2015 = \$ 60.86
 - 1/3 of \$157.33 Feb 6, 2015 – Mar 6, 2015 = \$ 52.44
 - \$78.12 ÷ 30 days in month x 8 days usage = \$ 6.94
- Natural Gas TOTAL \$120.24**

2. Unpaid hydro utilities as per the invoices submitted into evidence or estimated as follows:

- 1/3 of \$496.47 Jan 08, 2015 – Mar 09, 2015 = \$165.49
 - \$379.94 ÷ 59 days x 35 days Mar 10 – Apr 15, 2015 = \$ 75.12
- Hydro Total \$240.61**

3. Unpaid municipal metered utilities as per the invoices submitted into evidence or estimated as follows:

- 1/3 of \$562.27 Oct 1, 2014 – Dec 31, 2014 = \$187.42
 - 1/3 of \$819.86 Jan 1, 2015 – Mar 31, 2015 = \$273.29
 - Estimated Apr 1, 2015 – April 15, 2015 15 days - unknown amount
- Metered Utility Total plus 15 days \$460.71**

4. Damage to the washer and dryer – the Landlord stated that she has no proof that the Tenants broke the washer and dryer; however, when they stopped working the Tenants moved them in to the garage. She stated she is seeking \$100.00 for her costs to have the washer and dryer checked out. No receipt for this claim was submitted into evidence.
5. Costs to repair the electrical which included labour of \$150.00 plus \$200.00 to purchase light bulbs. The Landlord argued that the Tenants removed all of the light bulbs from the rental unit which caused her to have to purchase over 24 bulbs. She also alleged that the Tenants broke over 80% of the light switches which all had to be replaced. The Landlord stated that she has owned this house for 4 years now and it was built in 2006. The Landlord submitted a receipt into evidence for lightbulbs totalling \$229.88.
6. Plumbing costs of \$135.00 to repair the leaky valve on the hot water tank. The Landlord argued that this valve was broken by the Tenants. No receipts were submitted into evidence for these plumbing costs.
7. The Landlord testified that no rent was paid for April 15, 2015.
8. Carpet cleaning costs of \$165.00. The Landlord argued that the Tenants did not steam clean the carpets at the end of the tenancy. No receipts were submitted into evidence for this claim.

9. Car damage consisting of \$300.00 for the purchase of a new battery. The Landlord testified that her car had been parked inside her garage since 2012 and the Tenants placed paper on her engine which caused her battery to die. She submitted a photograph of her car with the shredded paper on top of the engine and an invoice for the purchase of a new car battery.

Tenants' Submission

The Tenants confirmed they did not pay the utility bills as claimed by the Landlord. They argued that they did not pay those utilities because they were issued a rent reduction of \$200.00 in a previous decision. The Tenants submitted that they had paid their February 15, 2015 rent of \$2,350.00 in full because they had not received the written Decision prior to when their February rent was due. They did not pay anything towards their March 2015 rent because that was their one month's free rent for being served the 2 Month Notice which was upheld in a previous hearing.

The Tenants testified that they did not damage or break the Landlord's washer and dryer. Rather, the machines broke while the Landlord was out of town. They argued that their requests to have the washer and dryer repaired were the subject of previous hearings. The Landlord was ordered to complete those repairs so they should not have to pay to have the machines looked at by a repair person.

The Tenants argued that the Landlord had also been issued previous repair orders to repair the electrical switches and the leaking water valve on the hot water tank. The Tenants asserted these items were ongoing issues relating to their maintenance requests so they should not have to pay for these costs simply because the tenancy ended.

The Tenants denied removing all of the light bulbs. They pointed to the police General Occurrence report and noted that the police officer indicated in the report that the Landlord had told him there was no damage in the unit after they moved out and upon completion of the walk through inspection.

The Tenants testified that they cleaned the carpets themselves as supported by their photographs submitted into evidence. They asserted that the lines shown on the carpets were visible because the carpets were still wet from cleaning and the lines represented where the machine had travelled on the carpet. The Tenants submitted that they own their own professional steam cleaner as they offer carpet cleaning to the clients of their own business.

The Tenants denied causing damage to the Landlord's battery in her car. They argued that the car had sat in that garage since 2012. They asserted that it is not unusual for a car battery to die if the car has not been driven or started in over 3 years.

The Tenants argued that they are entitled to the return of double their pet and security deposits because the Landlord did not return them within 15 days of the tenancy ending.

Analysis

The *Residential Tenancy Act* (the *Act*), the *Regulation*, and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Regarding the Utilities

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Regarding Damages

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Section 21 of the Regulations provides that In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Policy Guideline 1 is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property, and states, in part, as follows:

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 landlord is responsible for making sure all light bulbs and fuses are working when the tenant moves in; replacing light bulbs in hallways and other common areas like laundry and recreational rooms; and repairing light fixtures in hallways and other common areas like laundry and recreational rooms.

The tenant is responsible for replacing light bulbs in his or her premises during the tenancy.

Regarding last month's rent

Section 51(1) of the *Act* provides that a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 51(1.1) of the *Act* stipulates that a tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

Regarding Return of Security and Pet Deposits

Section 38(1) of the *Act* provides that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Section 38(7) of the *Act* stipulates that if a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

Regarding the Monetary Award

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 7(1) of the *Act* provides that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 72 (2)(b) provides that if the director orders a tenant to a dispute resolution proceeding to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Regarding Filing Fee

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Landlord's Application

I accept the Landlord's undisputed submissions that the Tenants were required to pay 1/3 of utilities in accordance with the tenancy agreement. I further accept the undisputed evidence that, based on the actual utility invoices submitted into evidence the Tenants have an outstanding balance of \$821.56 for utilities owed to the Landlord. This amount is comprised of \$120.24 for natural gas; \$240.61 for hydro; and \$460.71 for municipal utilities. Accordingly, I grant the Landlord's application for unpaid utilities in the amount of **\$821.56**, pursuant to sections 7 and 67 of the *Act*.

The Landlord was not able to provide the calculation to explain the amount claimed for the estimated metered utility bill from April 1 – 15, 2015. Accordingly, the claim for metered utilities for the period of April 1 to 15, 2015, is dismissed without leave to reapply.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

In response to the Landlord's claims for compensation for: \$100.00 for the washer and dryer inspection; \$350.00 for electrical work and lightbulbs; \$135.00 plumbing repairs; \$165.00 for carpet cleaning; and \$300.00 for a new battery for the Landlord's car; I conclude the Landlord submitted insufficient evidence to prove the Tenants were responsible to pay for those items.

I make the aforementioned conclusions, in part, due to the Tenants disputed verbal testimony and the Police Occurrence report which states the Landlord inspected the rental unit in the presence of a police officer and the Landlord told the police officer that she did not find any damage. In addition, the Landlord did not complete move in or move out condition report forms; therefore, there was insufficient documentary evidence to prove those damages occurred during the tenancy and due to these Tenants' actions or neglect. Rather, there was sufficient evidence before me which confirmed the Tenants' submissions that they had previously requested repair orders be issued by the RTB for the washer, dryer, and plumbing issues.

Furthermore, in absence of an invoice to prove the Landlord had the carpets cleaned, I accept the Tenants' submissions that they cleaned the carpets with their own steam cleaner. I also accept the Tenants' assertion that it is reasonable conclude that a car battery would die if the car is not started or driven for several years. In the presence of the Tenants' disputed verbal testimony there was also insufficient evidence to support the Landlord's submission that the Tenants vandalized her car causing the battery to die.

Based on the above, I dismiss the aforementioned monetary claim for damages, without leave to reapply.

Regarding the Landlord's submission that the Tenants failed to pay rent of \$2,350.00 that was due on March 15, 2015, the evidence confirms the Tenants were served a 2 Month Notice to end tenancy which was upheld by the RTB. Therefore, the Tenants were entitled to compensation equal to one month's rent for being issued the 2 Month Notice, pursuant to section 51 of the *Act*.

I accept the Tenants' submission that their rent for March 15, 2015 was considered paid in the amount of \$2,350.00 in accordance with section 51(1.1) of the *Act*, because the 2 Month Notice was upheld. The amount considered to be paid is \$2,350.00 as per section 51(1) of the *Act* which stipulates that the compensation is equivalent of one month's rent payable under the tenancy agreement and not the reduced rent granted due to lack of repairs.

In addition to the above, I accept the Tenants' submissions that they were entitled to a credit of rent paid due to the order granting them a \$200.00 rent reduction. That being said, I do not accept the Tenants' submission that the credit of \$200.00 was to be applied against their full

February 15, 2015 and March 15, 2015 rents. Rather, as per the Order issued February 13, 2015 the Tenants were granted compensation of \$200.00 per month which commenced on March 1, 2015.

As rent was payable on the 15th of each month I determined the Tenants were entitled to a rent reduction credit for the period of March 1 to March 14, 2015 of \$92.12. The amount was calculated for 14 days based on a daily rate of \$6.58 (\$200.00 per month x 12 months ÷ 365 days per year= \$6.58 daily rate). The Tenants were also entitled to the \$200.00 rent reduction credit for the period of March 15, 2015 to April 15, 2015. Accordingly, the Landlord's monetary award is to be reduced by the rent reduction credit owed to the Tenants of **\$292.12** (\$92.12 + \$200.00).

The Landlord partially succeeded with her application; therefore, I grant recovery of her filing fee in the amount of **\$50.00**.

Tenants' Application

This tenancy ended April 15, 2015 and the Landlord was provided the Tenants' forwarding address in writing on April 15, 2015. The Landlord filed her application to keep the \$1,100.00 security deposit within the required 15 days as set out in section 38(1) of the *Act*. Therefore, I conclude the Tenants are not entitled to the doubling provision of their security deposit pursuant to section 38(6) of the *Act*. Accordingly the **\$1,100.00** security deposit plus \$0.00 interest will be offset against the Landlord's award as listed below.

The Landlord filed her application for damage and loss within the required 15 days; however, none of the losses or damages claimed related to or were caused by the Tenants' pets as is required by section 38(7) of the *Act*. Therefore, the Landlord was not entitled to make application to keep the pet deposit; rather she was required to return the \$1,100.00 pet deposit plus any applicable interest to the Tenants within 15 days of April 15, 2015. As of September 29, 2015 the Landlord had not returned the pet deposit.

Based on the above, I find the Landlord is now subject to section 38(6) of the *Act* regarding the pet deposit and must now pay the Tenants' double the \$1,100.00 pet deposit plus interest of \$0.00 for a total amount of **\$2,200.00**.

The Tenants have partially succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

Offset Monetary Awards

These claims meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

Landlord's award (\$821.56 + \$50.00 - \$292.12)	\$ 579.44
LESS: Tenants' award (\$1,100.00 + \$2,200.00 + \$50.00)	<u>3,350.00</u>
Offset amount due to the Tenants	<u>\$2,770.56</u>

Conclusion

The Landlord was granted a monetary award consisting of \$821.56 utilities, less \$292.12 rent reduction, plus \$50.00 filing fee for a total amount of \$579.44.

The Tenants were granted a monetary award consisting of \$1,100.00 security deposit, \$2,200.00 double pet deposit, plus the \$50.00 filing fee for a total amount of \$3,350.00.

The monetary awards were offset against each other which left a balance owed to the Tenants of \$2,770.56.

The Tenants have been issued a Monetary Order for **\$2,770.56**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with Small Claims Court and enforced 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: October 9, 2015

Residential Tenancy Branch

