



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: MND MNSD MNDC FF

For the tenants: MNR MNDC MNSD FF

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The landlord applied for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to retain all or a portion of the tenants’ security deposit, and to recover the cost of the filing fee. The tenants applied for a monetary order for the cost of emergency repairs, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for the return of all or a part of their security deposit.

On September 20, 2016 the hearing commenced and the landlord, an agent for the landlord and the tenants attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

After 63 minutes, the hearing was adjourned to allow additional time to consider all of the evidence of the parties. An interim decision dated September 22, 2016 was issued which should be read in conjunction with this decision.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

On November 16, 2016, before the tenants' Application for Dispute Resolution (the "Application") could be heard, the tenants requested to withdraw their Application in full as they stated that they lost their documentary evidence during the adjourned time frame which involved a move between the date of the first part of the hearing on September 20, 2016 and the reconvened date of the hearing on November 16, 2016. As the landlord did not object to the tenants withdrawing their Application in full, the tenants were permitted to withdraw their Application in full. Accordingly, the Application of the tenants has not been considered and the tenants **are at liberty to reapply**. I note that the tenants' decision to withdraw their Application does not extend any applicable timelines under the *Act*.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

The parties agreed that a fixed term tenancy began on August 26, 2012 and reverted to a month to month tenancy after August 31, 2013. Monthly rent in the amount of \$1,400.00 was due on the first day of each month. The tenants paid a security deposit of \$700.00 at the start of the tenancy, which the landlord continues to hold.

The tenancy ended based on a 10 Day Notice for Unpaid Rent or Utilities being issued by the landlord. A previous decision was rendered regarding the end of tenancy, the file number of which has been included on the cover page of this decision for ease of reference. In that previous decision, the landlord was granted a total of \$5,200.00 representing \$5,100.00 in unpaid rent up to and including the month of January 2016, plus the recovery of the cost of the \$100.00 filing fee. The landlord was also granted an order of possession effective February 5, 2016.

The landlord's new monetary claim is for the following which the landlord has not claimed previously:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Orkin pest control	\$315.00
2. Sears carpet cleaning	\$351.75
3. [name of contractor B.L.]	\$100.00
4. General cleaning	\$125.00
5. Loss of rent due to condition of rental unit	\$2,800.00
TOTAL	\$3,691.75

Regarding item 1, the landlord has claimed \$315.00 for the cost of calling in a pest control expert to determine if there was rodent activity as claimed by the tenants. The landlord testified that pest control expert found no rodent activity and the landlord is seeking reimbursement of the total amount as a result of what ultimately the landlord has found to be a false claim by the tenants. The tenants claimed there were rodents however failed to provide documentary evidence in support of their claim. The landlord submitted a letter from B.L indicating that the insulation was cut out by humans and that there was no evidence of rats nesting or present in the insulation as claimed by the tenants. The pest control receipt indicates no signs or odours of any rodent activity in the home and in the crawlspace there were very minimal signs of rat feces and turned to dust when crushed which according to the inspector supports there to be no rodent issues as of February 16, 2016, the date of the inspection. The pest control service receipt is in the amount of \$315.00 which includes taxes and was submitted in support of this portion of the landlord's claim. The tenants stated that they did not feel they were responsible for the rodent inspection.

Regarding item 2, the landlord has claimed \$351.75 for carpet cleaning. An invoice in the amount of \$351.75 was submitted in support of this portion of the landlord's claim. The landlord testified that at the end of the tenancy, the carpets had a smell of marijuana and dog. Although there was no incoming or outgoing condition inspection, the tenants did admit that they did not have the carpets cleaned at the end of the tenancy. The tenants dispute \$69.99 plus tax on the invoice as that amount related to "dryer vent cleaning" which the tenants stated was not their responsibility.

Regarding item 3, the landlord has claimed \$100.00 for her contractor, B.L. who was called in to inspect the crawlspace after the tenants complained about a large hole in the insulation. According to the letter from B.L. submitted in evidence by the landlord, the large hole in the insulation was caused by humans and was not related to rodents and that no evidence of rodents was found. The tenants stated that B.L. was not a

rodent expert and were questioning his expertise as a result. The tenants claim they saw rat feces. The landlord stated that B.L. has 35 years of experience and that he is reliable.

Regarding item 4, the landlord has claimed \$125.00 for professional cleaning of the rental unit due to the condition the rental unit was left in at the end of the tenancy. The invoice submitted in support of this portion of the landlord's claim is in the amount of \$125.00 which is comprised of 5 hours at \$25.00 per hour. The landlord testified that there was far more cleaning performed than what is being claimed. The tenants testified that they "did do cleaning". The invoice submitted was dated April 7, 2016 although the landlord testified that new tenants moved into the rental unit on April 1, 2016. The landlord did not submit any photos in support of this portion of her Application.

Regarding item 5, the landlord has claimed a loss of rent of \$1,400.00 for the month of February 2016 and a loss of rent of \$1,400.00 for the month of March 2016 for a total loss of rent in the amount of \$2,800.00. There is no dispute that the tenants vacated the rental unit on February 5, 2016. The parties agreed that monthly rent was due on the first day of each month. The landlord testified that due to condition of the rental unit she was unable to rent the rental unit in March 2016. The landlord originally stated that the rental unit advertising did not occur until March 2016 and then later changed her testimony to "closer to the end of February 2016." The landlord testified that there was "so much work" required however the landlord did not complete a condition inspection report and the tenants testified that the landlord could have re-rented it right away.

Analysis

Based on the testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or loss that was incurred.

Item 1 - The landlord has claimed \$315.00 for the cost of calling in a pest control expert to determine if there was rodent activity as claimed by the tenants. I have considered that the landlord testified that pest control expert found no rodent activity and the landlord is seeking reimbursement of the total amount as a result of what ultimately the landlord has found to be a false claim by the tenants. I have also considered that the tenants claimed there were rodents however failed to provide documentary evidence in support of their claim. Given that the landlord has the burden of proof, I find the documentary evidence submitted by the landlords to be sufficient to prove that there was no rodent activity as claimed by the tenants and that the tenants are responsible for the cost as the landlord acted on their complaint which I find to be without merit.

Therefore, I find the tenants are responsible for the full cost of **\$315.00** as claimed for this portion of the landlord's claim.

Item 2 - The landlord has claimed \$351.75 for carpet cleaning. An invoice in the amount of \$351.75 was submitted in support of this portion of the landlord's claim. The landlord testified that at the end of the tenancy, the carpets had a smell of marijuana and dog. Although there was no incoming or outgoing condition inspection, the tenants did admit that they did not have the carpets cleaned at the end of the tenancy. The tenants dispute \$69.99 plus tax on the invoice as that amount related to "dryer vent cleaning" which the tenants stated was not their responsibility. While I find the tenants are required to have the carpets cleaned at the end of the tenancy consistent with Residential Tenancy Branch Policy Guideline 1, I agree with the tenants that the \$69.99 plus tax portion related to the "dryer vent cleaning" is the landlord's responsibility. Therefore, I have deducted \$69.99 plus 5 % tax which is \$73.49 from the amount of \$351.75 and find that the landlord is entitled to **\$278.26** for this portion of the landlord's monetary claim.

Item 3 - The landlord has claimed \$100.00 for her contractor, B.L. who was called in to inspect the crawlspace after the tenants complained about a large hole in the insulation.

After considering the evidence before me, I find that the landlord has met the burden of proof to be reimbursed the **\$100.00** amount for contractor B.L. as I prefer the evidence of the landlord over that of the tenants as I don't find the tenants' testimony to be reasonable based on there being insufficient evidence to support that there was rodent activity. Furthermore, I note that this finding is consistent with item 1 which also relates to the tenants' claim about rodents which I find to be without merit based on the evidence before me and to which the landlord suffered a financial loss as a result of to investigate.

Item 4 - The landlord has claimed \$125.00 for professional cleaning of the rental unit due to the condition the rental unit was left in at the end of the tenancy. The landlord testified that there was far more cleaning performed than what is being claimed. The tenants testified that they "did do cleaning". The invoice submitted was dated April 7, 2016 although the landlord testified that new tenants moved into the rental unit on April 1, 2016. The landlord did not submit any photos in support of this portion of her Application. As the tenancy ended on February 5, 2016, I find that the invoice dated nearly two months later to be insufficient evidence in supporting this portion of her claim without photographic evidence to support her claim which the landlord neglected to submit in evidence. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Item 5 - The landlord has claimed a loss of rent of \$1,400.00 for the month of February 2016 and a loss of rent of \$1,400.00 for the month of March 2016 for a total loss of rent in the amount of \$2,800.00. There is no dispute that the tenants vacated the rental unit on February 5, 2016. The parties agreed that monthly rent was due on the first day of each month. The landlord testified that due to condition of the rental unit she was unable to rent the rental unit in March 2016. The landlord originally stated that the rental unit advertising did not occur until March 2016 and then later changed her testimony to "closer to the end of February 2016." The landlord testified that there was "so much work" required however the landlord did not complete a condition inspection report and the tenants testified that the landlord could have re-rented it right away.

After carefully considering the evidence before me, I find that the tenants breached section 26 of the *Act* by failing to pay rent on February 1, 2016 as they remained in the rental unit until February 5, 2016. Therefore, I find the landlord has met the burden of proof and is owed February 2016 rent in the amount of **\$1,400.00**.

Regarding March 2016 loss of rent, I find the landlord failed to comply with section 7 of the *Act* which requires the landlord to make reasonable attempts to reduce their loss. I find the landlord provided insufficient evidence that attempts to re-rent the rental unit

were made in a timely manner after February 5, 2016 and I note that the tenancy was not a fixed term tenancy at end of the tenancy as it had reverted to a month to month tenancy. Given the above, **I dismiss** the landlord's claim for loss of March 2016 rent **without leave to reapply** due to insufficient evidence.

The landlord continues to hold the tenants' security deposit of \$700.00 which has accrued \$0.00 in interest since the start of the tenancy.

As the landlord was successful with only a portion of their claim, I grant the landlord the recovery of half of their filing fee in the amount of **\$50.00**. I find that the landlord has established a total monetary claim of **\$2,143.26** which is comprised of \$315.00 for item 1, \$278.26 for item 2, \$100.00 for item 3, and \$1,400.00 for item 5, plus \$50.00 of the filing fee. **I authorize** the landlord to retain the tenants' full security deposit of \$700.00 in partial satisfaction of their monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlord in the amount of **\$1,443.26**.

I caution the tenants to comply with section 26 of the *Act* in the future.

I caution the landlord to comply with sections 7, 23 and 35 of the *Act* in the future. The landlord is reminded to complete an incoming and outgoing inspection report for all future tenancies.

Conclusion

The landlord's claim is partially successful.

The landlord has established a total monetary claim of \$2,143.26. The landlord has been authorized to retain the tenants' full security deposit of \$700.00 in partial satisfaction of their monetary claim. The landlord is granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlord in the amount of \$1,443.26. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 5, 2016

Residential Tenancy Branch