



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNRT, MNSD

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38.

Tenant VW attended the hearing and confirmed she had authority to speak on behalf of tenant SM, who was not present. The named landlord and his property manager (collectively the "landlord") attended the hearing. Each party was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

On August 15, 2018 the tenants applied for dispute resolution naming the landlord as the respondent. During the hearing the landlord testified that the tenants incorrectly spelled his surname in their application. Accordingly, I have amended the tenants' application to reflect the spelling provided by the landlord during the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to a monetary order for the cost of emergency repairs to the rental unit?

Are the tenants authorized to obtain a return of all or a portion of the security deposit?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on May 15, 2015 on a fixed term until May 31, 2016. On June 1, 2016 the fixed term tenancy was renewed until May 31, 2018 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$900.00 was payable on the first of each month. The tenants remitted a security and pet deposit in the total amount of \$900.00 at the start of the tenancy.

On April 30, 2018, the tenants gave the landlord 30 days written notice. However a few days later, on May 9, 2018, the tenants were evacuated due to massive flooding from the Kettle River. The tenants lost use of the unit and property from May 9, 2018 to May 31, 2018.

Under these unique circumstances, the tenants cleaned the unit and on May 31, 2018, they left the keys for the unit on the kitchen counter.

The landlord acknowledged that he did not schedule a move-out inspection with the tenants and on June 22, 2018, he conducted a move-out inspection, without their participation. The landlord confirmed receipt of the tenants' forwarding address on July 2, 2018.

On an undisclosed date, the landlord forwarded the tenants a cheque in the amount of \$580.65 along with a detailed list of deficiencies.

The tenants seek the following monetary compensation;

Item	Amount
Loss of Use May 9-31	\$645.04
Fence Building	\$400.00
Emergency Repairs	\$320.00
Security Deposit	\$319.35
Total Claim	\$1,684.39

The tenants seek \$645.04 in compensation for the duration they were unable to occupy the unit and property, \$400.00 for fence building, \$320.00 for emergency repairs conducted in 2017 and \$319.35 for the remainder of their security deposit.

In reply, the landlord testified that the tenants were required to carry sufficient liability insurance as part of their tenancy agreement therefore any further loss or damage incurred should be covered. Despite this claim, the landlord testified that the \$580.65 already returned to the tenants was not a portion of the security deposit, rather it was for loss of use ($\$900.00/31 \text{ days} = \$29.03 \times 20 \text{ days}$). The landlord testified that as per the signed addendum, any fence maintenance is the responsibility of the tenants. The landlord testified that in 2017 he paid to have the septic tank emptied on notice from the tenant that it had backed up. The landlord admits he instructed the tenant to expose the tank to allow the truck to empty it, but denies any other work conducted by the tenant constitutes an emergency or was authorized by the landlord. The landlord testified that he retained the security deposit and that the tenants did not provide authorization to do so.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In this case, the onus is on the applicant to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the respondent in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Loss of Use

I find the tenants established that they lost use of the rental unit and property from May 9, 2018 to May 31, 2018. However, I find this loss was attributed to an unforeseen, natural, weather related incident; not due to the actions or neglect of the landlord. For this reason, I dismiss this portion of the tenants' claim without leave to reapply. The parties are encouraged to review their respective insurance policies to determine what loss, if any is covered in such an event.

Because I have determined that the landlord is not liable for loss of use, I find the \$580.65 payment to the tenants constitutes an overpayment.

Fence Building

As part of his documentary evidence, the landlord submitted a copy of the addendum to the tenancy agreement which states that “maintenance and repairs of the fence are the responsibility of the tenant.” Residential Tenancy Policy Guideline #1 outlines that a fence must be maintained by the party that erected it and in the case of a fence erected by a tenant; the tenant must first obtain consent from the landlord. In this case, the tenants seek compensation for “fence building for the landlord” but have provided insufficient details to establish this claim. The tenants have failed to indicate who initiated the fence building and where or when it took place. For this reason, I dismiss the tenants’ claim of \$400.00 for fence building, without leave to reapply.

Emergency Repairs

There is no dispute that in 2017 the septic tank overflowed, the tenants contacted the landlord and at the direction of the landlord, the tenants exposed the tank to assist in a prompt emergency repair. In regards to any other repairs made at this time, I find the tenants have failed to establish they were in relation to the emergency repair relayed to the landlord. As the tenants’ calculation includes labour for other repairs, and not just the labour for exposing the tank, I find I cannot award the tenants \$320.00. However, because I am satisfied that the tenants exposed the tank at the direction of the landlord and was not compensated for their role in this emergency repair, I grant the tenants a nominal award of \$40.00 (\$20 x 2 hrs).

Security Deposit

When a landlord fails to offer the tenant at least two opportunities for inspection, the landlord’s claim against the security deposit for damage to the property is extinguished. Because the landlord in this case did not offer the tenants an opportunity for a move-out inspection, he lost his right to claim the security deposit for damage to the property.

The landlord was therefore required to return the security deposit to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenants’ forwarding address in writing. The landlord received the tenants’ forwarding address on July 2, 2018 but did not return the security deposit within 15 days of that date.

Because the landlord's right to claim against the security deposit for damage to the property was extinguished, and he failed to return the tenants' security deposit within 15 days of having received their forwarding address, section 38 of the *Act* requires that the landlord pay the tenant double the amount of the deposit. Accordingly, I find the tenants are entitled to compensation in the amount of \$1,800.00.

In summary, I find the tenants are entitled to \$1,840.00 less the \$580.65 already paid for a total award of \$1,259.35

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$1,259.35 for the following items:

Item	Amount
Emergency Repairs	\$40.00
Security Deposit	\$1,800.00
Less Loss of Use	(\$580.65)
Total Monetary Order	\$1,259.35

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: November 06, 2018

Residential Tenancy Branch