

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage and loss?

Background, Evidence and Analysis

The parties agreed that the landlord currently holds a \$425.00 security deposit. The parties further agreed that the tenants vacated the rental unit on August 31, 2008. I address the landlord's claims and my finding around each as follows:

- [1] **Cleaning and cleaning supplies.** The parties agreed that the landlord is entitled to recover \$210.00 as the cost of cleaning the rental unit and 33.81 as the cost of cleaning supplies. I award the landlord \$243.81 for this claim.
- [2] **Moving costs.** The landlord claims \$40.00 as the cost of moving the tenants' belongings from the rental unit to the driveway. The landlord testified that the tenants were obligated to vacate the rental unit at 1:00 p.m. on August 31, 2008. The landlord testified that at 1:30 on that date, the tenants had not yet moved all of their belongings out and that one of the tenants said that the landlord could move the items onto the driveway. The tenants testified that they believed they did not need to move until 1:00 p.m. on September 1, 2008 and denied having told the landlord that they agreed to having their belongings moved to the driveway. Although the landlord is correct in his assertion that the tenants were required to vacate the rental unit on August 31 at 1:00 p.m., the landlord was not entitled to remove the tenants' belongings without either a writ

of possession or their consent. The landlord did not have a writ of possession and I find that the landlord has failed to prove that he had the consent of the tenants. The landlord therefore cannot recover the cost of moving the tenants' belongings and the landlord's claim is dismissed.

- [3] **Advertising.** The landlord claims \$118.91 as the cost of advertising the rental unit at the end of the tenancy. The parties agreed that the tenancy agreement provided that the tenancy was to continue for a full year, ending on or about March 31, 2008. The parties further agreed that the tenancy ended pursuant to a one-month notice to end tenancy for cause served on the tenants by the landlord. The landlord claims that had the tenants completed the full term of the lease, they would not have had to incur advertising costs. I find that the landlord elected to end the tenancy and in doing so, released the tenants from their obligation to fulfill the term of the lease. The tenants therefore cannot be held responsible for advertising costs and the landlord's claim to recover those costs is dismissed.

- [4] **Soffit repair.** The landlord claims \$87.75 as the cost of repairing a soffit damaged by the tenants. The tenants acknowledged having damaged the soffit and testified that they purchased a piece to replace the damaged area, but the landlord did not accept the new piece as it did not match the older soffit. The landlord testified that when the tenants failed to repair the soffit with an identical piece, he hired a repairman to perform a repair which was accomplished by bending the damaged piece back and screwing it in. The tenants argued that the cost of the repair was excessive. The landlord acknowledged that he too was surprised at how the repairman performed the repair and at the cost, but testified that regardless of the method or cost of repair, he should not be responsible for the cost when the tenants caused the damage. The testimony of the parties leads me to believe that when the landlord told the tenants they must repair the soffit, he told them the damaged piece must be replaced. The tenants attempted to perform the repair required by the landlord and were unable to find a piece that matched the old soffit. I find that the landlord was obligated to achieve not only a repair, but one that was cost-effective. I find the

landlord was obligated to provide the tenants with the opportunity to effect the same repair that was eventually performed by the repairman and I find the landlord failed to provide the tenants with that opportunity. I find the landlord is entitled to recover a reasonable cost for the repair and which I find to be \$20.00. The landlord is awarded \$20.00 for this claim.

[5] **Photographs and photocopying.** The landlord claims \$30.13 as the cost of developing pictures and photocopying documents for use in this proceeding. Under the Act, the only cost of litigation I am empowered to award is the cost of the filing fee paid to bring this application. As I do not have the authority to make the requested award, the landlord's claim to recover these costs is dismissed.

[6] **Filing fee.** The landlord seeks to recover the \$50.00 paid to bring this application. I find that the landlord is entitled to recover the fee and award the landlord \$50.00.

Conclusion

In summary, the landlord has been successful in the following claims:

Cleaning and cleaning supplies	\$243.81
Soffit repair	\$ 20.00
Filing fee	\$ 50.00
Total:	\$313.81

I find that the landlord has established a claim for \$313.81. I order that the landlord retain \$381.56 from the deposit and interest of \$428.76 in full satisfaction of the claim and I order the landlord to return the balance of \$114.95 to the tenants forthwith. I grant the tenants an order under section 67 for the balance due of \$114.95. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated October 29, 2008.

