



Dispute Resolution Services

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

Decision

Dispute Codes: MNR MNSD OPL OPR RPP FF

Introduction

This hearing dealt with a cross applications by the parties. The landlords withdrew their application for an order of possession as the tenants have already moved out. The landlords are applying for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants are applying for a monetary order as compensation for their possessions that were not returned by the landlords.

Preliminary Matter

The female tenant was the male tenant's wife. The female tenant said that while she was on the tenancy agreement, she never moved into the rental unit as the male tenant had a girlfriend. However, she did help the male tenant move into the rental unit. Furthermore, shortly after the December 23 incident, she had a conversation with the male tenant about this tenancy.

Issues to be Decided

Whether the landlords are entitled to a monetary order and an order to retain the security deposit in partial satisfaction of the claim?

Whether the tenants are entitled to a monetary order for compensation for their possessions that were not returned by the landlords?

Background and Evidence

On May 1, 2008, the landlords collected a security deposit in the amount of \$425.00. The tenancy started on the same day. A monthly rent in the amount of \$850.00 was payable in advance on the first of each month.

On November 19, 2008, the male tenant was served with a notice to end tenancy for cause with an effective date of January 1, 2009. The male tenant failed to pay the December rent. When the landlords asked for the December rent, the male tenant said that he had no intention of paying it and that he would be moving out on December 20.

On December 23, the landlords attended the rental unit and found the lock to be changed. The landlords then asked the locksmith to help them gain entry into the rental unit and changed the lock. The landlords found the male tenant to have left behind some items such as kitchen utensils, bungee cords, electrical cords, aerosol cans, a vacuum cleaner, a tool box and lots of garbage. They then telephoned the Residential Tenancy Branch and were given the advice that they could consider the tenants to have abandoned the rental unit and to store the remaining items in the rental unit for two months.

The male tenant later returned to the rental unit and found himself to be locked out. He later reported this incident to the local police. On the same day, the male tenant regained entry into the rental unit on his own. On January 5, the landlords returned the remaining items from the rental unit to the police station for the male tenant to pick up.

Analysis

Issue #1 – Whether the landlords are entitled to a monetary order and an order to retain the security deposit in partial satisfaction of the claim?

The landlords are seeking recovery of the followings.

December rent	\$850.00
Utility for November and December	\$220.00
Bank charges re. December rent check	\$ 25.00
November late charges	\$ 25.00
Locksmith	\$ 90.00
Cleaning	\$195.00
Total	\$1405.00

December Rent and Utility Charges

The male tenant did not dispute the followings. He did not pay the December rent in the amount of \$850.00 and the December utility charges in the amount of \$110.00.

When asked if he paid the utility for November, the male tenant was hesitant. Eventually, he said he did pay it. When asked who he paid the utility charges to, the male tenant said he was not sure. Later, he said it was the upstairs tenant. When asked how much he had paid the upstairs tenant, the male tenant became hesitant again. Eventually, he said that it was \$110.00 or \$120.00. Eventually, he said it was \$112.00. When asked why he would pay \$112.00 when the tenancy agreement stipulates his share of the utility to be \$110.00, the tenant offered no explanation. The landlords said that they did confirm with the upstairs tenant that the male tenant never paid the November utility. Based on the above evidence, I find that the male tenant did not pay the November utility of \$110.00.

Based on all of the above, I allow a claim for \$850.00 in unpaid rent for December, \$220.00 for unpaid utility charges for November and December.

Bank Charges and Late Payment Charges

The male tenant admitted that he put a stop payment on the December rent check. This in turn caused this rent check to be returned by the bank to the landlords. The landlords are seeking recovery of \$25.00 as bank charges. I note that clause 4 b) i stipulates the applicability of such charges in this tenancy. I therefore allow a claim for \$25.00 for bank charges related to the returned December rent check.

The male tenant admitted that he was late in paying the November rent. The landlords are seeking recovery of the \$25.00 as late payment charges. I note that clause 4 b) ii stipulates the applicability of such charges in this tenancy. I therefore allow a claim of \$25.00 as late payment charges for November.

Locksmith

The tenant admitted that he changed the lock of the rental unit. The landlords are seeking recovery of \$90.00 as payment they made to the locksmith to gain entry into the rental unit and to change the lock. The landlords said that on December 23, they paid the locksmith cash and failed to ask for a receipt. They offered to obtain a receipt and submit it as evidence after the hearing. Based on the above, I allow the landlords' claim for \$90.00 as costs incurred in addressing the change of lock by the male tenant.

Cleaning

The landlords said that the male tenant left the rental unit dirty throughout and the carpet had dry dog feces. The landlords said that they had submitted to the Residential Tenancy Branch, photos showing the condition of the rental unit as of December 23. To date, I am not in receipt of these photos. A witness testified that before the commencement of this tenancy, she cleaned the rental unit for 10

hours before the male tenant moved in. The female tenant said that when she helped the male tenant move in, she observed that the rental unit to have been professionally cleaned. She added that she is a professional cleaner herself. The landlords are seeking recovery of \$195.00 for 5 hours of cleaning by 2 people. The landlords said that they have a receipt from the cleaners but did not submit it.

The male tenant did not dispute that he did not clean the rental unit before he moved out. He also did not dispute that he had a dog in the rental unit. He claimed that he was not given an opportunity to do the cleaning as he was locked out on December 23.

I note that the male tenant admitted that he managed to gain entry into the rental unit on December 23 despite the lock change. Yet the male tenant made no attempt to clean the rental unit on that day. Furthermore, no evidence was adduced to indicate that he had ever requested permission from the landlord to re-enter the rental unit for the purpose of cleaning.

Based on the above, I allow the landlord's claim for \$195.00 for 5 hours of cleaning by two people.

Conclusion on Issue #1

Based on all of the above, I find that the landlords have established a total claim of \$1405.00. The landlords are also entitled to recovery of the \$50.00 filing fee. I order that the landlords to retain the security deposit and interest of \$429.27 in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of \$1025.73. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Issue #2 – Whether the tenants are entitled to a monetary order for compensation for their possessions that were not returned by the landlords?

The male tenant claims that the landlords had failed to return all of his possessions to him. He is seeking compensation for these items as follows.

Television	\$1260.00
Craftsman toolbox	\$ 750.00
Filter Queen vacuum	\$1800.00
Clothes	\$ 220.00
Kitchen utensils	\$ 160.00
Total	\$4190.00

The landlords said that they have returned all of the male tenant's possessions to the police station on January 5, 2009.

Throughout the hearing, the male tenant testified in a hesitant and evasive manner. His testimony contains several inconsistencies which were not explained. Some of these inconsistencies are mentioned above.

As well, the female tenant testified that shortly after December 23, she had a conversation with the male tenant. During this conversation, the male tenant said to her that the landlords had taken his television, stereo, tools and other things. The male tenant also said that he could easily put in a \$10,000.00 claim and really get the landlords. The male tenant did not dispute that this conversation took place.

Based on the above, I have accepted the landlords' testimony that they had returned all of the male tenant's possessions to him.

Conclusion on Issue #2

Based on all of the above, I dismiss the male tenant's claims for compensation for his possessions that were not returned by the landlords.

Dated: January 19, 2009