



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for compensation for damage to the rental unit or property, unpaid rent, damage or loss under the Act, regulations or tenancy agreement, to retain the security deposit and recover the filing fee. Both parties appeared at the hearing and were provided an opportunity to be heard.

Issues(s) to be Decided

1. Whether the landlord has established an entitlement to compensation for damage to the rental unit or property?
2. Whether the landlord has established an entitlement to unpaid rent?
3. Whether the landlord has established an entitlement to compensation for damages or loss under the Act, regulations or tenancy agreement?
4. Retention of the security deposit.
5. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony of the parties I make the following findings. The tenants began residing in unit #3 at the residential property in April 2004 and had a tenancy agreement for that rental unit. The tenants paid a \$195.00 security deposit on March 26, 2004. In July 2005 the tenants relocated to unit #4 in the residential property (the rental unit). A new tenancy was not prepared; rather, the former tenancy agreement was altered by the manager to reflect the change in rental units. On January 2, 2009 the tenants left a message for the landlord that they would be vacating the rental unit. On January 2, 2009 the tenants gave the landlord written notice that they

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would be ending the tenancy effective February 1, 2009 by placing the notice in the landlord's mail slot. The tenants vacated the rental unit on February 1, 2009. The tenants had been paying rent of \$500.00 on the 1st day of the month at the end of their tenancy. The tenants did not pay rent for the month of February 2009.

The landlords are seeking to recover unpaid rent for February 2009 in the amount of \$500.00; depreciated cost of a broken fridge of \$200.00; the estimated cost of \$210.00 to remove a satellite dish from the exterior of the rental unit and repair damage to the hallways caused by the tenants' movers, and an estimated amount of \$500.00 for damage caused by the tenant painting the hallway walls during the tenancy. The landlord testified that advertising efforts began immediately after the tenants gave notice; however, the rental unit was not re-rented until March 15, 2009.

The landlords provided evidence that the rental unit was advertised at \$700.00 per month in January 2009 and \$625.00 in February 2009.

The landlords testified that the tenants' movers damaged the hallway in two places during the move-out. The landlords testified that the satellite dish will have to be removed and the holes adequately filled. The landlord provided a copy of an estimate to repair the hallway and stucco in the amount of \$200.00 plus GST.

The landlords testified that the tenant had taken it upon himself to partially paint many of the common interior walls and the walls need to be re-painted. The landlord estimated the cost to be \$2,800 to \$3,000 for all the walls to be painted by professional painters or \$500.00 to \$600 for the landlord to do it himself. The landlords are seeking to recover \$500.00 from the tenants.

The landlords testified that the tenant tried moving a fridge from the hallway and damaged it. The fridge was subsequently disposed of and replaced at a cost of \$489.00. The landlord acknowledged that the fridge was located in another rental unit occupied by a different tenant and that tenant had complained the fridge was no longer working. The landlord claims to have placed the fridge in the hallway temporarily until such time it could be serviced. The landlord is seeking to recover a depreciated cost of \$200.00 for damage to the fridge from the tenants.

A move-in and move-out inspection report was provided by the landlord as evidence; however, the move-in portion of the document was not signed by the tenants.

The tenants do not agree with having to pay rent for February 2009 as the tenants allege that the landlords gave their new landlord false information about the cleanliness and their new landlord did not approve their rental application until January 2, 2009. The landlords denied telling the new landlord that the tenants were unclean. The tenants claim that the landlord had difficulty re-renting the unit because of the torn carpets. The landlords acknowledged replacing the flooring after the tenancy ended; however, attributed the lack of interest in the rental unit to the messy conditions in the rental unit while the tenants occupied it.

The tenants claim that the satellite dish was professionally installed and that it can remain in place for the subsequent tenants to use if they get a contract with the satellite carrier. The tenants testified that they tried to hire a contractor to remove the dish and repair the holes but that they were told the job was too small.

The tenants do not agree with having to compensate the landlords for the damaged fridge as the fridge was blocking the stairwell and the landlords gave the tenant permission to move it. The tenant claimed that another tenant helped to move the

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fridge fell against the wall causing the tenant to drop the fridge. The tenant described the fridge as rusty and the tenant who used the fridge had told him it made the food taste funny. The landlords could not confirm the age of the fridge that was damaged.

The tenants did not agree with having to compensate the landlord for the painting he did in the hallways as the tenant alleged that the landlord gave him permission to do so. The landlords denied giving the tenant permission and testified that the tenants' were paint to clean the building and not manage it or maintain it.

The tenants acknowledged that their movers damaged the hall in one place.

Analysis

A tenant may end a month to month tenancy by providing written notice to the landlord at least one month before the end of the tenancy. The effective date for the end of a month to month tenancy must be the last day of a rental period unless agreed unless another date is agreed to by the parties. As I heard that the rent is due on the 1st day of every month, each rental period starts on the 1st day of the month and ends on the last day of the month. The tenants gave written notice that they would be vacating the rental unit February 1, 2009. Without agreement of the landlord February 1, 2009 does not comply with the Act as it is not the last day in a rental period.

With respect to the Notice to End Tenancy given by the tenants, the Notice is deemed to be received by the landlords on January 5, 2009 under section 90 of the Act. Section 90 of the Act deems documents left in a mail slot to be received by the other party three days after it is deposited in a mail slot. Having given notice on January 5, 2009 the earliest effective date the tenants could have chosen to end their tenancy was February 28, 2009. I do not accept the tenant's position that the landlords were responsible for the tenants providing late notice.

When a tenant vacates a rental unit, the tenant must vacate by 1:00 p.m. on the last day of the rental period, unless otherwise agreed by the parties. The tenants actually vacated the rental unit on February 1, 2009 which is the first day in the subsequent rental period; therefore, the tenants were in possession of the rental unit for a portion of the month of February 2009.

Since the tenants gave late notice to end the tenancy for January 2009 and did not vacate the rental unit until February 2009 I find the tenants are liable for paying rent for the month of February 2009. I grant the landlord's request for compensation of \$500.00 for unpaid rent for the month of February 2009.

Having heard that the tenants installed a satellite dish on the exterior of the building, the tenants are responsible for paying for its removal. The tenants did not provide me with sufficient assurance that the subsequent tenant had accepted the satellite dish for their own use which would pass the liability to the subsequent tenant. Based on the balance of probabilities, I find it more likely than not that the tenants' movers caused two dents to the walls and the tenants are responsible for paying for the repair of the walls caused during the move. The landlord provided an estimate of \$200.00 plus GST to remove the satellite dish and plug the holes in the stucco and patch the walls caused by the movers. I find this estimate to be reasonable and I grant the landlords' request to recover this cost from the tenants.

I do not award the landlord damages for the broken fridge since I was not sufficiently satisfied of its depreciated value. I was unable to determine from the disputed testimony whether the landlords had given permission to move the fridge. Even if the tenant took it upon himself to move the fridge, I was not able to determine the value of the fridge before it was damaged. According to the Residential Tenancy Policy

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Guidelines, appliances have an average useful life of 15 years. Having heard the fridge was rusty and not working properly, it is quite possible the fridge was at least 15 years old at the time it was damaged. In awarding claims for damages, the amount of the award usually reflects the depreciation of the damaged property. Accordingly, I find it more likely than not that the damaged fridge had very little depreciated value at the time it was damaged and I make no award to the landlord for the fridge.

I do not award the landlord compensation for the painting of the hallways done by the tenant. According to the Residential Tenancy Policy Guidelines, interior painting has a normal useful life of 4 years. Having heard that the hallways were last painted more than 4 years prior I find that the walls are likely in need of repainting due to normal wear and tear and the tenant's actions are not likely to cause the landlord to incur additional costs.

In summary, the landlord has established an entitlement to recover unpaid rent of \$500.00 and removal of the satellite dish and repair of the walls in the amount of \$210.00. I authorize the landlord to retain the tenants' security deposit and accrued interest in partial satisfaction of these amounts. As the landlord was partially successful in this application, I also award the landlord the filing fee paid for this application. In light of these findings, I provide the landlord with a Monetary Order calculated as follows:

| | |
|---|------------------|
| Unpaid rent – February 2009 | \$ 500.00 |
| Remove satellite and repair wall | 210.00 |
| Filing fee | 50.00 |
| Less: security deposit and accrued interest | <u>(201.90)</u> |
| Monetary Order for landlord | <u>\$ 558.10</u> |



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The landlord must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord is authorized to retain the tenants' security deposit and accrued interest in partial satisfaction of the amounts owed the landlord. The landlord is also provided a Monetary Order for the balance of \$558.10.

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: May 1, 2009.

Dispute Resolution Officer