

DECISION

Dispute Codes MND MNSD FF

Preliminary Issues

The Landlords advised that the male Tenant listed on the application for dispute resolution never occupied the rental unit and the Landlords do not know where this person resides.

The Male Landlord stated that he thought the male Tenant listed his name on the tenancy agreement to boost the credibility of the female Tenant's statements that she could afford to pay the rent but that in reality the male Tenant never occupied the rental unit and the Landlords never heard from this male person again and do not know where he currently resides so could not serve the male Tenant with notice of today's hearing.

Section 88(1) of the Act determines the method of service for documents. The Landlords have applied for a Monetary Order which requires that the Landlords serve each respondent as set out under section 89(1). In this case only one of the two Tenants has been properly served with the Notice of Dispute Resolution. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the female Tenant who has been properly served with Notice of this Proceeding. As the second Tenant has not been properly served the Application for Dispute Resolution as required by section 89(1) of the Act the monetary claim against the male tenant is dismissed without leave to reapply.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for damage to the unit, to keep the security deposit, and to recover the cost of the filing fee from the Tenant.

Service of the hearing documents, by the Landlords to the female Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 9, 2009. Mail

receipt numbers were provided in the Landlord's verbal testimony. The Tenant was deemed to be served the hearing documents on April 14, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Have the Landlord's proven their entitlement to a Monetary Order pursuant to Sections 38, 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy began on March 28, 2008, was scheduled to expire on March 31, 2009, however the tenant moved out of the rental unit February 18, 2009. Monthly rent was payable on the first of each month in the amount of \$1,200.00. The Tenant paid a security deposit in the amount of \$600.00 on March 22, 2008.

The Landlord confirmed that he received the Tenant's forwarding address on April 8, 2009.

The Landlords testified that the Tenant began the habit of paying her rent late and when they didn't receive the full payment of rent for January 2009 a 10 Day Notice to End Tenancy was issued to the Tenant, who later paid the January rent. The Landlords advised that the Tenant's February 1, 2009 rent cheque was returned NSF and that she paid the Landlord's \$700.00 on February 5, 2009. The Landlords testified that they advised the Tenant that if she did not pay the balance of the rent that she would have to vacate the rental unit by February 20, 2009.

The Landlords stated that they tried to communicate with the Tenant via telephone however she never took their calls and never returned their messages so the only way they could communicate with the Tenant was through e-mail. The Landlords advised that they tried to set up a move out inspection with the Tenant on two occasions and then on February 23, 2009 they received an e-mail from the Tenant advising that she vacated the rental unit on February 18, 2009 and that she had left the keys on the counter.

The Landlords sent the Tenant an e-mail February 24, 2009 with the Final Notice for Inspection attached, and also posted a copy of the final notice on the rental unit door in case the Tenant returned to the rental unit. The Landlords saw that the Tenant had vacated the rental unit and conducted the move-out inspection in the Tenant's absence on February 21, 2009, and began to clean the rental unit so the new tenants could occupy it as soon as possible.

The Landlords advised that the tenancy agreement stipulated no smoking in the rental unit and yet they found cigarette burns in the curtains in the master bedroom and in the dinning room and that there were cigarette ashes and smoke stains in several areas of the house.

The Landlords testified that the hydro was turned off for non-payment, that the hydro account was in the Tenant's name and that in order to have the hydro turned on again the account had to be put in the Landlords' name and the arrears paid in full. Hydro would not provide the Landlord's with an invoice in the Tenant's name, only an invoice that showed the arrears at the rental site location.

The Landlords stated that there was excessive damage to the drywall in the master bedroom where a large crack was created. The Landlords stated that the Tenant also had numerous holes in each wall where she had pictures hung.

The Landlords stated that they have claimed \$1,495.00 to repair the laminate flooring that had nail polish splattered on it in the living room, dining room and 3rd bedroom. The Landlords advised that they found the nail polish stains when they were conducting the move-in inspection report with the new tenants. The Landlords stated that they had to replace numerous pieces of the laminate flooring because once you take it apart you cannot re-use it. The Landlords stated that the repairs had been done and that they did not submit evidence in support of this claim.

Analysis

I find that in order to justify payment of damages or loss under section 67 of the *Act*, the Applicant Landlords would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicants pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Landlords, bears the burden of proof and the evidence furnished by the Applicant Landlords must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In regards to the Landlords' right to claim damages from the Tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section

67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

The Landlords have claimed 3 banking fee charges of \$27.00 each for a total of \$81.00 which represents charges incurred from the Tenant's returned rent cheques. Although Section 7 of the *Residential Tenancy Regulation* stipulates that a landlord may claim a service fee charged by a financial institution to the landlord for the return of a tenant's cheque, I find that the Landlords have not proven the test for damages, as listed above, as they did not provide documentary evidence in support of this claim. Based on the aforementioned I hereby dismiss the Landlord's claim for \$81.00, without leave to reapply.

With respect to the Landlords' claim for 3 window screen replacements in the amount of \$90.00, I note that there is no mention of damaged or missing window screens on the move-out inspection report and that there is no documentary evidence such as pictures or invoices in support of this claim. Based on the above I find that the Landlords have failed to meet the test for damages and I hereby dismiss their claim of \$90.00 without leave to reapply.

The Landlords have submitted claims of \$30.00 for a dump bill and \$1,495.00 for damage to the laminate floor. I find that for both of these claims the Landlords have failed to prove the test for damages as there is no documentary evidence in support of either one of these claims. Based on the aforementioned I hereby dismiss the Landlords' claims of \$1,525.00, without leave to reapply.

Based on the evidence and testimony I find that the drapes were not washed and that there is noted damage to the dining room drapes from cigarette burns. The Landlords testified that these drapes were recently new prior to the Tenant taking possession of the unit. I find that the Landlords have proven the test for damages and approve their claim for damage to the living room / dining room drapes and for washing the remainder of the drapes in the amount of \$75.00.

The Landlords have claimed \$400.00 for cleaning the interior and exterior of the rental unit, including yard maintenance and clean up. I find based on documentary evidence and testimony that the Landlords have proven the test for damages and I hereby approve their claim in the amount of \$300.00 (20 hours x \$15.00 per hour).

I find that the Landlords and Tenant came to a mutual agreement to end the tenancy early and that the Tenant did not pay the full amount of rent for February 2009. Section 26 of the *Act* stipulates that a tenant must pay rent when it is due under the tenancy agreement and based on the above I find that the Tenant did not comply with the *Act*. I find that the Landlords have complied with Section 7 of the *Act* by mitigating their losses and re-renting the unit as quickly as possible. Based on the above I find in favour of the Landlord's claim of \$280.00 of loss of rent.

The documentary evidence supports the Landlord's testimony that the Tenant was required to clean the fireplace chimney and that she admitted to not complying with this agreement. Based on the above I find that the Landlords have proven their claim in the amount of \$90.00.

The Landlords provided documentary evidence and testimony for the remainder of their claim for Hydro \$50.87, Wall Repair \$4.35, Paint \$34.02, Toilet Seat \$15.67, cleaning products \$5.05, replacement key \$2.23 for a total of \$112.19. I find that the Landlords have proven their claim for these items and hereby find in favour of the Landlord's claim of \$112.19.

The Landlords have been primarily successful in their claim and I find that they are entitled to recover the cost of the filing fee from the Tenant.

Monetary Order – I find that the Landlords are entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the

Tenant's security deposit, and that the Landlords are entitled to recover the filing fee from the Tenant as follows:

Drapes – Cleaning and damaged	\$75.00
Cleaning – Interior, exterior, and yard maintenance	300.00
Loss of rent for February 2009	280.00
Fireplace chimney cleaning	90.00
Hydro, wall repair, paint, toilet seat, cleaning products, key	112.19
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$907.19
Less Security Deposit of \$600.00 plus interest of \$7.01	- 607.01
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$300.18

Conclusion

I HEREBY FIND in favor of the Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for \$300.18. The order must be served on the respondent Tenant and is enforceable through the Provincial Court as an order of that Court.

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: June 25, 2009.

Dispute Resolution Officer