



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MNR, MND, MNSD, & FF

Introduction

This hearing dealt with an application by the landlord seeking a monetary claim related to loss of rent, damage to the rental unit, to keep the tenants' security deposit plus interest in partial satisfaction of this claim, and to recovery the filing fee paid for this application.

Both parties were present at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions during the hearing.

Issues(s) to be Decided

Has the landlord established a monetary claim related to loss of rent and damage to the rental unit cause by the tenants?

Background and Evidence

The parties have entered into three different lease agreements for the same rental property starting September 1, 2006. The most recent one year fixed term lease was effective September 1, 2008 to August 30, 2009 for the monthly rent of \$1,840.00. A security deposit of \$840.00 was originally paid by the tenants on June 30, 2006. The tenants gave approximately two month's notice of their intent to end the tenancy and vacated the rental unit as of February 24, 2009.

As the parties were in a fixed term tenancy the tenants were aware that they were responsible for fulfilling the contract to August 30, 2009. Both parties submitted evidence showing it options to sub-let or assign the contract were discussed. There was also an offer by the tenants to compensate the landlord the equivalent of two months rent if they were released from the contract.

The landlord submitted that they attempted to find new tenants to take over the contract, including reviewing potential tenants referred to them by the respondents. Despite these efforts the landlord stated that they were not able to rent the unit until April 1, 2009 but at a loss of \$340.00 per month compared to the contract with the tenants to the end of

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August 2009. The landlord had found a potential new tenant for March 1, 2009 however this agreement was not completed. The landlord acknowledged that a prospective tenant from the respondents contacted them but they did not complete the application form properly. The landlord stated that despite attempts to contact this person they never were considered as a prospective tenant.

The landlord also presented evidence that the tenants agreed to areas in the rental unit that needed to be cleaned and that the tenants agreed to the costs to clean these items. The landlord submitted a copy of the move-in and move-out condition inspection report where the following notation was written: "*Tenant approved cleaner to deduct from security deposit*". It was also determined during the move-out inspection that the carpet had been damaged. Although the landlord acknowledges that the tenants attempted to repair the damage, she submits that it was not a very good job.

On March 12, 2009 the landlord wrote the tenants a letter indicating the loss of rental revenue and damage to the unit. In the letter the landlord submitted that the tenants should agree to sign over their security deposit and pay the sum of \$3,540.00 to cover the damage experienced by the landlord. In this application the landlord requests the following damages:

Loss of full rent for March 2009	\$1,840.00
Cost to clean rental unit to landlord's standard	\$500.00
Assessed value of damage to carpet	\$350.00
Recovery of \$50.00 filling fee paid for this application	\$50.00
Total	\$4,440.00

The tenants dispute the landlord's claim. They argued that the landlord did not make sufficient efforts to find suitable and new tenants despite the fact that they referred at least two prospective tenants. They argued that the landlord received their notice several months in advance and find it unreasonable that the unit was not rented.

The tenants provided a written statement from one of the prospective tenants referred to the landlord by them. In this statement the individual expresses the opinion that the landlord delayed the approval to enter into an agreement despite her willingness to take the unit as of March 1, 2009. This individual understood that the delay was not a result of the application form not being filled out properly but due to the landlord not being available for the week before March 1, 2009.

The tenant also disputed the landlord's claim for costs to clean the rental unit and to cover the damage to the carpets. The tenants also provided a copy of the move-in and

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move-out condition inspection report and an additional sheet which listed five areas they claim was what they agreed could be cleaned and charged against their security deposit. The tenants submitted that they believed that it would only cost approximately \$100.00 to complete this cleaning, not \$500.00 as claimed by the landlord. The tenant also stated that they have repaired the damage to the carpet and it is only noticeable because the replacement carpeting is newer than the original.

Analysis

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*.

I grant the landlord's application in part; however, I am persuaded that the landlord did not take sufficient measures to mitigate their loss as required by section 7 of the *Act* and therefore I do not accept the landlord's claim for the difference in rental rates for the remainder of the fixed term lease.

Although I am satisfied that the tenants were aware of their obligations, I am not satisfied that the landlord's agent or the landlord made the efforts required to mitigate the potential losses. I make this finding based on the written correspondence exchanged between the parties which cause me to question the landlord's agent's position that they were unable to re-rent and unable to obtain the same level of rent. Therefore, I find it is too convenient that the loss of rental income between the rent in the fixed term lease and in the alleged new tenancy agreement is \$340.00 as speculated multiple times in the correspondence between the parties in the absence of any evidence to show that they had difficulties finding tenants at the original rental rate of \$1,840.00.

I was also persuaded by the evidence presented by the tenants where the landlord's agent's attempts to find new tenant was stalled or delayed by the owner of the rental unit who was apparently away on vacation at the end of February 2009. The owner has hired an agent to act on his behalf and I do not find it appropriate that the agent cannot proceed in the owner's absence, at the tenants' expense.

I am also very concerned about the landlord's agents "offer" in an e-mail dated February 11, 2009 to act on the tenants' behalf to find new tenants for their client for the charge of \$750.00. This appears to be a conflict of interest as the agent is in the employment of the landlord and should not be offering services to the tenants related to the same contract or property. This "offer" can also be perceived as coercion, or an attempt to coerce the tenants to accepting an unfair position.

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I find that the landlord has failed to establish a loss of rental income of \$340.00 per month for the remainder of the fixed term lease. As a result I only accept that the landlord lost one month's rent for the sum of \$1,840.00 for the month of March 2009. I accept that the landlord did find a new tenant as of April 1, 2009.

Regarding the amounts claimed for cleaning the rental unit and damage to the carpets, I find that the landlord as failed to substantiate this claim. I accept the evidence of the tenants that there were five areas that were agreed as needing cleaning. This is significantly different than the subsequent claim by the landlord that the entire rental unit was not clean. This is inconsistent with what the parties agreed to at the time of the move-out condition inspection. I also am not satisfied with the receipt for cleaning provided by the landlord which fails to confirm how payment was made, what taxes were charged, how many hours were spent cleaning and the hourly charge. Based on the landlord's evidence that the charge was \$25.00 per hour, then the rental unit apparently required 20 hours of cleaning. This is not supported by the move-out condition inspection report or the photographs in my opinion.

I accept the tenants argument that the agreed to cleaning represented about \$100.00 or four hours of cleaning at \$25.00 per hour.

I accept that the tenants damaged the carpet to the rental unit. I also accept that the tenants made a significant effort to repair that damage. However, despite their repairs the landlord has suffered damage to the value of the fixture and I accept that the sum of \$350.00 is a reasonable claim for the damage caused.

I also grant the landlord's request to recover the \$50.00 filing fee paid for this application. I find that the landlord has established a total monetary claim for the sum of \$2,340.00. From this sum I Order that the landlord may retain the tenants' security deposit plus interest of \$878.31 in partial satisfaction of this claim.

I grant the landlord a monetary Order for the remaining balance owed of **\$1,461.69.**

Conclusion



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The landlord's application is granted in part and a monetary Order as been issued due to the tenants' breach of the fixed term lease, damage to the rental unit and for costs to clean the rental unit.

Dated: July 20, 2009.

Dispute Resolution Officer