



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order for unpaid rent, for loss or damage under the Act or tenancy agreement and to recover the filing fee for this proceeding. The landlord also applied to keep all or part of the security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*. One copy was sent to a tenant by registered mail on July 02 and the other tenant was served in person on the same day.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Have the landlords established a monetary claim due to the loss of rent and damage to the rental unit?
- Are the landlords entitled to keep all or part of the security deposit and interest?
- Are the landlords entitled to recover filing fees from the tenants for the cost of the application?

Background and Evidence

This tenancy started on November 24, 2008. This was a fixed term tenancy which would expire on December 31, 2009. The tenants paid rent of \$1,475 per month due on the 1st of each

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month. The tenants paid a security deposit of \$737.00 on November 24, 2008. At the beginning of the tenancy the landlords and tenant completed a move in condition inspection.

The landlord testifies that in March, 2009 one of the tenants approached them to tell them he had lost his job and would be unable to pay the rent due on April 01, 2009. The landlord agreed that the tenants could move out on April 15, 2009 and they instructed the landlord to use the security deposit towards the April rent and they would pay the balance on April 15, 2009. One tenant moved out early in April and the landlords arranged a time with the remaining tenant to do the move out condition inspection on April 15, 2009. The landlord testifies that the tenant phoned and changed the time of the appointment to later in the day. When the landlords arrived to carry out the inspection the tenant had already left the rental unit. The door was unlocked and the keys were left inside.

The landlord carried out the move out condition inspection in the tenant's absence as they were not given a forwarding address. They found the tenants had caused some damage to the unit beyond reasonable wear and tear. They found scratches on five floor boards which had to be replaced at a cost of \$262.50, the remote for the fireplace was missing and had to be replaced as they tenants could not initially find it at a cost of \$72.80 and the closet doors were damaged. This repair is still ongoing and the landlord has no estimates at this time. The entire unit was left dirty and the landlord used a cleaning service to carry out the clean up of the unit. This took 13 hours at \$18.00 an hour to the sum of \$234.00.

The tenants dispute the landlord's testimony that they left the rental unit unclean. The tenant who moved out on April 15 testifies that he did clean the rental unit before he left. He admits that one of the floorboards did get scratched when he was moving out. He also testifies that the closet doors were badly fitted and had always been a problem. He disputes the landlord efforts to re-rent the unit.

The landlords confirm their testimony and state that the cleaner had to wash walls and windows, clean the bathroom, clean floors, stove top and oven. Clean the fridge, microwave and cupboards. They testify that the bathroom and kitchen appliances required extra cleaning due to the state they had been left. The landlords have provided some evidence as to the efforts made



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to re-rent the unit. This was advertised on Craig's List, in the local paper and by word of mouth. They eventually had to lower the rent to \$1,395.00 to attract a new tenant. The unit was re-rented for July 01, 2009.

Analysis

Based on the testimony, evidence and balance of probabilities, I find that the landlords have established their claim for damages listed above. I find that the damaged caused is beyond reasonable wear and tear which would have occurred during the normal course of a tenancy and for the loss of the remote control. This has caused losses to the landlord of \$335.30.

The tenants vacated the rental unit without cleaning it to a suitable standard as required by the section 32(2) and (3) of the *Act*. The landlord has incurred costs to clean the unit over and above what he would normally have to do to prepare it for a new tenant at a cost of \$234.00.

The Residential Policy Guidelines #3 state that a landlord is entitled to sue the tenant for loss of rental income up to the end of the tenancy agreement. The landlord gave the tenant Notice of their intent to take this action when they filed their application for Dispute Resolution. The amount awarded is an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement. Therefore, I find the tenants owe rent to the landlord for April, 2009 of \$1,475.00 and a loss of revenue for May and June, 2009 of \$2,950.00. As the landlords managed to re-rent the unit at a loss of \$80.00 per month for the remainder of the term of the tenancy agreement I find they are also entitled to claim the sum of \$480.00 from the tenants.

I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit in partial payment of the rent arrears and damages. As the landlords have been successful in this matter they are also entitled to recover the filing fee paid for this application of \$50.00. The landlord will receive a Monetary Order for the balance owing as follows:



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Rent arrears for April 2009	\$1,475.00
Damages and remote control	\$335.30
Cleaning costs	\$234.00
Sub total	\$5,474.30
Less security deposit and accrued interest	(-738.15)
Filing fee	\$50.00
Total amount due to the landlord	\$4,786.15

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,78**

6.15. The order must be served on the respondents 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: September 11, 2009.

Dispute Resolution Officer