



Dispute Resolution Services

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

DECISION AND REASONS

Dispute codes: MND, MNR, MNSD, MNDC

Introduction

This was an application by the landlords for a Monetary Order and an Order to retain the security deposit in partial satisfaction of the monetary claim. The hearing was conducted by conference call. The landlords and the tenants participated in the hearing.

Background and evidence

The tenancy began on July 29, 2007 and ended on May 28, 2008. The tenancy agreement was for a one year term ending July 29, 2008 and the agreement provided that the tenants must move out at the end of the term. In a prior dispute resolution proceeding, by decision dated September 24, 2008 the tenants were granted a monetary award in the amount of double their security deposit. The landlords have now applied for a monetary order in the amount of \$3,372.35 that they say is owed for unpaid rent, utility bills, the cost to repair the rental unit and loss of revenue.

The landlord claimed the following amounts:

- For utilities - \$757.00
- Damage to hardwood floor – \$826.88
- Advertising costs – \$388.47
- Loss of revenue - \$1,400.00

The tenancy agreement provided that the tenants were responsible for payment of 65% of the utilities for the rental property. The agreement provided for payment of \$300.00 per month for utilities, with an accounting of the actual amount at the end of the tenancy. The agreement obliged the tenants to pay the amount by which the utilities

exceeded \$300.00 per month. According to the landlords' calculations based on the bills provided the actual utility costs exceeded the amount paid by \$757.00. The landlord submitted an e-mail message from the tenants who occupied the lower suite in the rental property. The message was dated February 29, 2008. The message the tenant advised that they were moving out on April 1st. He complained about the number of occupants in the rental unit above them and the noise created by the tenants. He also stated that: "Additionally we pay half the hydro and I am sure the bills are much higher for Jan/Feb 08."

The landlord claimed the sum of \$826.88 being the cost to refinish a hardwood floor in the bedroom. The landlord produced a photograph of the floor before the tenancy commenced and one taken afterwards. The later photograph shows scratches and marks on the hardwood floor, but it is impossible to tell from the photograph whether or not it is a picture of the same floor shown in the first photo. The landlord submitted an estimate or quotation for floor refinishing in the amount of \$787.50 plus GST. The quote was dated September 29, 2008. The landlord claimed that the work had been performed and the landlords paid the quoted amount, but he did not produce a bill or any other record of payment. He did not say when the work was performed. I note that the quote was obtained four days after the tenants were granted a monetary order for the return of double the amount of their security and pet deposits and I note that the landlord filed the application for dispute resolution on October 2, 2008, three days after the quote was given.

The landlord claimed the sum of \$388.47 being the amount spent to advertise the rental unit from May 1, to May 14, 2008. He claimed the sum of \$1,400.00 said to be loss of revenue for the month of May, 2008 due to the upstairs tenant moving because of noise and disturbance by the tenants.

Analysis and conclusion

I deny the landlord's claim for payment of utilities. The documents submitted by the landlords show that they were collecting 115% percent of the utilities from the tenants of the rental property; 65% from the tenants of the upper rental unit and \$50% from the

tenants of the lower unit. Given this fact, which is based on the landlords' own evidence, I find that the provision in the tenancy agreement that obliged the tenants to pay \$300.00 per month and in addition the amount by which 65% of the actual utility bills exceeded \$300.00 per month was unconscionable as defined by section 3 of the *Residential Tenancy Regulation* which provides that: "For the purposes of section 6 (3) (b) of the Act [*unenforceable term*], a term of a tenancy agreement is "unconscionable" if the term is oppressive or grossly unfair to one party." Section 6 (3) (b) of the Residential Tenancy Act provides that a term of a tenancy agreement is not enforceable if the term is unconscionable. I consider the term requiring the tenants to pay 65% of the utilities when in fact the landlord was recouping 50% of the utilities from the other tenant to be oppressive and grossly unfair to the tenant.

With respect to the landlord's claim for floor refinishing. The landlord did not provide satisfactory evidence to show that the work was necessary and that it was actually performed. The quote was obtained a mere three days before the application was filed. I am unable to ascertain the location of the marked flooring from the photograph provided. I regard this part of the landlord's claim to be unproven on a balance of probabilities and the claim is therefore denied.

The landlord claimed the sum of \$388.47 for advertising costs. The tenants submitted that the landlord was attempting to get them to move before the end of the rental term and that they agreed to move early. The tenants presented evidence that the landlord was advertising the rental unit and showing it to prospective tenants as early as January, 2008. I find that the tenants did give notice to end the tenancy before the end of the fixed term. The landlord acted promptly to re-rent the unit and succeeded in re-renting the unit. I allow the advertising claim in the amount of \$388.47 as a legitimate expenditure in mitigation of the landlord's claim for loss of revenue.

The landlord claimed the sum of \$1,400.00 for loss of revenue based on the contention that the downstairs tenants moved out due to noise from the tenants. In their submissions the tenants have made their own complaints about the conduct of the downstairs tenants and noise and disruption caused by them. I find that the landlord

has failed to demonstrate on a balance of probabilities that the tenants were to blame for the end of the downstairs tenancy. I deny this claim.

I have awarded the landlord the sum of \$388.47 for advertising costs; all other claims are dismissed without leave to reapply. The landlord requested an order to retain the tenants' security deposit. This claim is denied because the tenants were awarded the return of their deposit, including double the amount in a prior proceeding. The landlord is entitled to recover the \$50.00 filing fee for this application for a total claim of \$438.47 and I grant the landlord an order under section 67 in the said amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated December 12, 2008.