

Dispute Resolution Services

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

Decision

Dispute Codes: MND, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

The tenants made an argument that in a hearing held on May 25, 2009 they were awarded \$300.00 and that this amount should be set off against the landlord's claim. Because the application of the tenants which was dealt with in the May hearing was not brought at the same time as this decision, I am unable to apply a set off. The parties are encouraged to set off the award in favour of the tenants against the award against the tenants arising from this decision.

The tenants made a further argument that the landlord had extinguished her right to claim against the security deposit because she did not complete the condition inspection at the end of the tenancy or provide the tenants with a copy of the report. While it appears that the landlord has extinguished her claim against the security deposit, this does not mean that the landlord may not make any claim for damages against the tenants. Under section 72(2)(b) of the Act I am permitted to apply a security deposit to an award made to a landlord regardless of whether the landlord has extinguished her claim against the deposit. In the interest of expediency, the deposit has been applied to the award.

Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence and Analysis

The tenancy began on June 1, 2008 and ended on May 2, 2009. At the outset of the

tenancy the landlord collected a security deposit from the tenants in the amount of \$600.00. I address the landlord's claims and my findings around each as follows.

[1] **Unpaid Rent and Loss of Income.** The landlord claims \$200.00 in unpaid rent for December, \$600.00 in unpaid rent for April and \$696.78 in loss of income for May. The tenants agreed that they did not pay the amounts claimed for December and April. The parties further agreed that it was approximately the second week of April that the tenants gave notice to the landlord that they would be vacating at the end of April. The landlord testified that she started advertising on April 21 but was unable to re-rent the unit until May 19. The landlord seeks to recover the income lost from May 1 – 18. The Act requires tenants to give one full month's notice that they are vacating. I find that the tenants did not comply with this requirement of the Act and that as a result, the landlord lost income from May 1-18. I find that the landlord acted reasonably to mitigate her losses and I find that the landlord is entitled to recover \$696.78 in lost income for May as well as the \$200.00 in unpaid rent in December and \$600.00 in unpaid rent in April that the tenants have acknowledged. I award the landlord \$1,496.78.

[2] **Late Payment Fees.** The landlord seeks to recover 3 late payment fees of \$25.00 each for the months of December, April and May. The tenancy agreement provides that late payments are subject to a \$25.00 charge. I find that the landlord is entitled to recover late payment fees for December and April but I find that the landlord may not collect a late payment fee for the month of May as the tenancy was ended by that point. I award the landlord \$50.00 in late payment fees.

[3] **Hardwood Repairs.** The landlord testified that the hardwood floors in the rental

unit had been refinished immediately before the tenants moved in and that at the end of the tenancy, there was damage to the flooring. The landlord provided photographs of the flooring which show several marks on the floor. The landlord asked me to telephone a witness who could testify as to the condition of the floor, but the witness was not available at the time the telephone call was attempted during the hearing. In order to succeed in this claim, the landlord must prove that the marks on the floor are beyond what may be considered reasonable wear and tear. Although the floor has clearly sustained some damage, I find that the damage may be characterized as reasonable wear and tear and accordingly I dismiss the landlord's claim.

- [4] **Cleaning, Labour and Supplies.** The landlord testified that the tenants failed to completely clean the rental unit at the end of the tenancy. Specifically, the landlord testified that the tenants failed to clean the stove and the washing machine and filter, to sweep under the refrigerator and in the basement and to remove tape which had been used to apply an insulating film to the windows during the winter, a film which was supplied to the tenants by the landlord. The landlord further testified that the curtains needed to be washed and re-hung, doorways and walls needed paint touch-ups and the carpets needed shampooing. The landlord further testified that the tenants had pruned trees on her property and on adjacent properties and left the tree trimmings in the yard, which trimmings she had to remove. The landlord further testified that the tenants did not return the keys to the unit until June, so she had to replace the locks for the new tenants who moved into the unit. The tenants testified that they cleaned the rental unit thoroughly at the end of the tenancy. The tenants acknowledged that there were some marks on the

walls and doors but argued that these occurred because the stairs and doorways were too narrow to permit their furniture to be moved easily. The tenants acknowledged having pruned trees, but argued that the landlord benefited from the pruning. The tenants acknowledged that they did not return keys until June but testified that they were waiting for the landlord to contact them about completing the condition inspection report. I find that the tenants must be held responsible for the cost of changing locks as it was their duty to return the keys to the landlord when they surrendered possession of the rental unit. I find that the tenants must also be held responsible for the cost of the carpet shampooing, the washing of curtains and the labour involved with gathering the tree trimmings. Although the landlord may have benefited somewhat from the pruning, the tenants pruned trees that did not belong to the landlord and left trimmings which she ordinarily would not have been responsible for. Further, because the tenants had exclusive use of the yard, they were responsible for its maintenance. I find that minimal cleaning was required. The tenants clearly did not adequately clean the stove or oven racks or sweep under the refrigerator, but I find that the unit was substantially clean at the end of the tenancy. I find that the tenants cannot be held responsible for the time involved with removing adhesive from the windows when the landlord provided the kits to insulate the windows, thereby giving the tenants permission to apply the adhesive. I find that the tenants must be held responsible for the damage to the walls and doors, requiring touch-up paint. Although the stairway and doors were narrow, the tenants opted to rent the unit rather than renting a unit with more generous proportions and should have exercised greater caution when moving their furniture. The landlord claimed a total of \$400.87 for cleaning, labour and

supplies. I discount the landlord's claim by \$100.00 as I find the cleaning charge to be excessive and I award the landlord \$300.87.

[5] **Advertising.** The landlord claimed the cost of advertising the rental unit. As the tenants did not break a fixed term lease, I find that they cannot be held liable for advertising costs as the landlord would have incurred those costs even if the tenants had given a full month's notice. Accordingly this claim is dismissed.

[6] **Filing fee.** The landlord seeks to recover the \$50.00 paid to bring this application. I find that the landlord is entitled to recover the fee and award the landlord \$50.00.

In summary, the landlord has been successful in the following claims:

Unpaid rent/loss of income	\$1,496.78
Late payment fees	\$ 50.00
Cleaning, labour, supplies	\$ 300.87
Filing fee	\$ 50.00
Total:	\$1,897.65

I find that the landlord has established a claim for \$1,897.65. I order that the landlord retain the deposit and interest of \$605.26 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,292.39. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order for \$1,292.39 and may retain the security deposit.

Dated September 28, 2009.