

## Decision

Dispute Codes: MND, MNR, MNSD, MNDC, FF

### Introduction

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

In this decision where the plural is used in reference to the landlords or tenants, it refers to both landlords or both tenants. Where the singular is used for the landlords, it refers to B.E., who gave testimony on behalf of both landlords at the hearing. Where the singular is used for the tenants, it refers to the tenant R.P. who represented both tenants at the hearing.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

### Background, Evidence and Analysis

The parties agreed that the tenancy began on February 20, 2009 and ended at the end of June 2009. The monthly rental rate was set at \$1,500.00 and a \$750.00 security deposit was paid.

In a letter dated June 10, 2009, the landlords advised the tenants that the final inspection of the rental unit was scheduled to occur at 1:00 p.m. on June 30. The tenant acknowledged having received the letter and testified that the landlord told them verbally that the inspection would take place at 11:00 and in an email told them the inspection would take place at 12:00. The tenant claimed that emails included with her evidence showed that the landlord told her the inspection was scheduled for 12:00, but no such email as submitted. The tenant testified that they were available for the inspection at 11:00 on June 30, waited for 45 minutes and left when the landlord did not attend. The landlord testified that she and her agent arrived at the rental unit shortly before 1:00 and conducted the inspection when it became apparent that the tenants were not going to participate. The tenant argued that the landlords had not provided them with two opportunities to schedule a condition inspection, which I take to be an

argument that the landlord's right to make a claim against the security deposit was extinguished pursuant to section 36(2) of the Act. Regulation 17(1) requires the landlord to provide a first opportunity to schedule a condition inspection and Regulation 17(2) directs tenants to propose an alternative time if the proposed time is unacceptable. I find that the tenants did not propose an alternative time, thereby leading the landlords to believe that the first proposed time was acceptable. I do not accept the tenants' position that the landlord gave different times verbally and by email. I find that the landlords have not extinguished their right to make a claim against the security deposit and I find that the tenants, by failing to participate in the condition inspection, extinguished their right to make a claim for its return.

I address the landlord's claims and my findings around each below.

1. **Loss of Income.** The landlords claim \$750.00 in lost income for July 1 – 14, 2009. The landlord testified that they advertised the The tenant testified that she emailed a notice to end the tenancy shortly before midnight on May 31, 2009. The landlord testified that the email was received on June 3. While an emailed notice is not contemplated by the Act, I find that because the landlord acknowledged having received the notice, it was effective to end the tenancy. Although a copy of the tenancy agreement was not entered into evidence, the tenant acknowledged during the hearing that the agreement provided a fixed term to the end of August. By ending the tenancy prior to August 31, the tenants breached the terms of the tenancy agreement. The landlords testified that they began advertising the rental unit close to the end of June and were able to re-rent the unit for July 15. The landlords testified that they would have been unable to re-rent the unit prior to that date because of the extent of the cleaning required. I find that the landlords acted reasonably to minimize their losses and find that because the tenants breached the terms of their tenancy agreement, they must be held liable for the landlords' loss of income for July 1 – 14. I award the landlords \$750.00.
2. **Utilities.** The landlords claim \$190.00 in utilities that remained unpaid at the end of the tenancy. The landlords testified that the tenant had agreed to pay for utilities for the rental unit but had not done so. The landlords entered into evidence a copy of a utility bill showing that \$94.88 was payable for the months of May and June and that there were arrears in the amount of \$94.00. The tenant acknowledged that she was responsible to pay utilities. Although the tenancy agreement was not entered into

evidence to show that the tenant was responsible for paying utilities, the tenant acknowledged that she was responsible and accordingly I find that the landlord is entitled to recover the cost of the utilities. Although the invoice presented does not identify the months for which the arrears were owing, the tenant did not pay utilities in the months of March and April and the amount in arrears is roughly the same as the charges for May and June. I find that the utility bill is for the months of March – June inclusive and I award the landlords \$189.88.

3. **Carpet cleaning.** The landlords claim \$100.00 as the cost of cleaning carpets at the end of the tenancy. The landlord testified that the carpets on the lower floor of the rental unit were soiled and required cleaning and provided an invoice showing that \$105.00 had been paid for carpet cleaning. The landlord and her witness R.O. both testified that the carpets had been professionally cleaned immediately before the tenancy began. The landlord testified that the tenancy agreement provides that the tenants were responsible to pay for professional cleaning of the carpets at the end of the tenancy. The tenant did not acknowledge this provision of the tenancy agreement. The tenant argued that they only lived in the rental unit for a few months and that they had steam cleaned the carpets once during the tenancy using a rented cleaner. While the tenancy was short in duration, given my findings below on the overall condition of the rental unit, I am satisfied that the carpets required cleaning. I find the amount claimed by the landlord to be reasonable and I award the landlords \$100.00.
4. **Carpet replacement.** The landlords claim \$325.00 as the cost of replacing carpets in the master bedroom at the end of the tenancy. The landlord testified that at the beginning of the tenancy the carpet in that room had one small stain which was so minor it could barely be seen, but at the end of the tenancy there were numerous very large stains in the carpet. The landlord further testified that the person hired by the landlord to clean the carpets advised the landlords that the stains could not be removed. The tenant argued that the stains were present at the time they moved into the unit. The condition inspection report completed upon move-in shows that at the beginning of the tenancy the carpets in that bedroom were “clean w/stains.” In order to be successful in this claim, the landlords must prove that the tenants damaged the carpets to an extent that they required replacement. The condition inspection report uses the plural when referring to the stains. It is clear that the

carpets had already suffered some damage before the tenancy began and I am not satisfied that the tenants caused further damage which can be characterized as being beyond reasonable wear and tear. Accordingly I dismiss this claim.

5. **Cleaning.** The landlords claim \$240.00 as the cost of cleaning the rental unit at the end of the tenancy. The landlord and her witnesses all testified that the rental unit was extremely dirty, floors were dirty and sticky, walls and windows were marked with scuffs, splashmarks and fingerprints, cupboards were not cleaned out, the bathrooms had stains, appliances had not been cleaned and a laundry room sink was layered with grime. The landlords provided photographs of the rental unit. The tenant testified that she cleaned the rental unit thoroughly and argued that some of the photographs were deliberately misleading. For instance, the tenant claimed that the landlords' close-up photograph of the oven was clearly of a different oven. However, a close examination of the photograph shows that the cupboard adjacent to the oven in the close-up photograph has the same relief, or decorative grooves, as the cupboard in the photographs showing a wider angle. Although the tenant provided a written statement from her sister who claimed that the tenant thoroughly cleaned the rental unit, the sister did not state whether she herself had witnessed the tenant cleaning or whether the tenant had merely told her that she cleaned. I find the landlords' evidence and testimony to be more persuasive than that of the tenants and find that the landlords have proven that the house required extensive cleaning. I find the \$240.00 charge to be reasonable and I award the landlords that sum.

6. **Plumbing.** The landlords claim \$84.00 as the cost of a plumbing bill incurred during the tenancy. The landlord provided an invoice showing that \$84.00 was paid to unplug and auger the toilets. The parties agreed that in May the tenants advised the landlords that the toilet in the upstairs bathroom was backing up. The landlords arranged for a plumber to attend at the rental unit. The plumber inspected and snaked the upstairs toilet and then proceeded to inspect the toilet on the lower floor. The landlords testified that the toilet was full of fecal matter and that the plumber found a piece of fabric lodged in the pipes. The tenant took the position that the fabric did not match the colour of her towels and therefore probably belonged to the tenants who lived in the rental unit prior to the tenancy. Because the tenants lived in

the rental unit for more than 10 weeks before the toilet problems were reported, I am satisfied that the tenants must be held responsible for the plumbing charge. I award the landlord \$84.00.

7. **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:

Loss of income	\$ 750.00
Utilities	\$ 189.88
Carpet cleaning	\$ 100.00
Cleaning	\$ 240.00
Plumbing	\$ 84.00
Filing fee	\$ 50.00
<b>Total:</b>	<b>\$1,413.88</b>

I find that the landlords have established a claim for \$1,413.88. I order that the landlords retain the \$750.00 security deposit in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of \$663.88. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### Conclusion

The landlords are granted a monetary order for \$663.88 and may retain the security deposit.

Dated November 04, 2009.