



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for an order for the return of double their security deposit and a cross-application by the landlords for a monetary order and an order to retain the deposit in partial satisfaction of their claim. Despite having been served with the landlord's application for dispute resolution and notice of hearing by registered mail, the tenants did not participate in the conference call hearing. I was satisfied that the tenants had been properly served with notice of the hearing and details of the claim and the hearing proceeded in the tenants' absence.

As the tenants did not appear at the hearing to advance their claim, the claim is dismissed without leave to reapply.

Issues(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlords' undisputed testimony is as follows. The tenancy began in 2007 at which time an \$800.00 security deposit was paid. In August 2008 the parties signed a new lease agreement and a further \$70.00 deposit was paid. The new lease agreement obligated the tenants to pay \$870.00 per month in rent until August 29, 2009, which was the end of the fixed term. The tenancy agreement contains a term which provides as follows: "The tenants must indicate in writing one month before the end of this agreement their intention to renew or vacate the apartment. Failure to notify will result

in loss of the damage deposit.” The rental unit was furnished and the landlord also provided items such as dishes, cookware, cutlery, towels and bedding.

On June 11 the tenants gave the landlords notice that they intended to vacate the rental unit on June 30, 2009. The landlords advertised the unit for rent but were only able to re-rent the unit as a vacation rental for 10 days in July, for which they received \$500.00. When they vacated the unit, the tenants removed most of the furnishings and items which had been provided to them. The tenants also failed to clean the rental unit.

The landlords seek to recover the value of the items which were taken from the rental unit, the cost of the key fobs and the cost of cleaning. The landlords also seek to recover loss of income for the balance of July and for the month of August. Although this was not particularized in their claim, the landlords stated that they were willing to limit the amount of their claim for lost income to the amount of the security deposit.

The landlord entered into evidence photographs of the rental unit showing its condition at the end of the tenancy and a list of items which were taken from the apartment, the replacement cost of those items, some of which were purchased new and others from second hand from a moving sale. Following is an itemized list of the landlords’ claim:

Replacement items	\$ 733.92
Cleaning	\$ 120.00
Service fee	\$ 50.00
Contract breaking penalty	\$ 870.00
Credit for key return	-\$ 60.00
Filing fee	\$ 50.00
Total:	\$1,763.92

Analysis

I accept the landlords’ undisputed evidence. I find that the tenants vacated the rental unit without adequate notice and removed items belonging to the landlords. I find that the landlords are entitled to recover the costs of replacing most of those items. I dismiss the claim for the replacement cost of the handmade tablecloth which was valued at \$25.00 as no evidence was entered showing the actual value of the tablecloth

and there is no indication that it was, in fact, replaced. I award the landlords \$708.92 for the items which were removed.

I find that the tenants failed to clean the rental unit which resulted in the landlords having to hire a cleaning service. I award the landlords \$120.00 for cleaning.

I find that the service fee is based not on any loss suffered by the landlords but on their irritation at having to act quickly to mitigate their losses. I find that there is no legal basis on which to make such an award and therefore dismiss that claim.

The landlords wished to retain the security deposit toward lost income for the months of July and August. The landlords' application for dispute resolution and the evidence, both of which were served on the tenants indicate that they are claiming against the security deposit because the tenants' broke the contract and do not make any mention of lost income for the months of July and August. I find that I am unable to make an award for lost income as it did not form part of the landlords' claim that was served on the tenants. I find that the landlords are not able to retain the security deposit as a penalty for breaking the contract as the provision in the tenancy agreement on which they seek to rely is in direct conflict with section 20(e) of the Act which prohibits a provision by which the deposit is automatically forfeit. The claim is therefore dismissed.

I find that the landlords are entitled to recover the \$50.00 filing fee paid to bring this application and award them that sum.

Conclusion

The landlords are awarded a total of \$878.92 which represents \$708.92 to replace items which were taken, \$120.00 for cleaning and the \$50.00 filing fee. I grant the landlords a monetary order under section 67 for \$878.92. This order may be filed in the Small Claims Division of the Provincial Court and enforced 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: December 15, 2009
