

DECISION

Dispute Codes OPR OPB MNR MNDC MND

Preliminary Issues

The Landlord testified that he had made arrangements with the Tenants that they would be moved out of the rental unit prior to the Landlord attending the unit on September 1, 2009 to show it to the new tenants. When the Landlord attended the rental unit he was informed by the next door neighbours that the Tenants vacated the rental unit during the middle of the night on August 31, 2009.

The Landlord confirmed that he has regained possession of the rental unit and is withdrawing his request for an Order of Possession.

The Landlord advised that he personally served the female Tenant with notice of his application for dispute resolution. The Landlord argued that the Tenants vacated the rental unit in the middle of the night and did not provide him with a forwarding address so the Landlord attended the female Tenant's place of work and served her personally with the hearing documents on November 17, 2009.

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlord is seeking a monetary Order which requires that the Landlord serve each respondent as set out under *Residential Tenancy Rules of Procedures*. In this case only one of the two Tenants has been personally served with the Notice of Direct Request Proceeding document, in accordance with section 89 of the Act. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only the Female Tenant who has been properly served with Notice of this Proceeding.

As the male Tenant has not been properly served the Application for Dispute Resolution as required the monetary claim against the male Tenant is dismissed without leave to reapply.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent, for money owed or compensation for damage or loss

under the Act, for damage to the unit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, served personally by the Landlord to the Tenant, at the Tenant's place of employment on November 17, 2009 at 4:45 p.m.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Has the Landlord proven entitlement to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*, if so for what amount?

Background and Evidence

The fixed term tenancy agreement began on December 1, 2008 and was set to expire on December 1, 2009. The Tenancy ended on August 31, 2009 when the Tenants vacated the rental unit after being issued a 10 Day Notice to End Tenancy. The monthly rent was payable on the first of each month in the amount of \$1,100.00 and the Tenants paid a security deposit of \$550.00 and a pet deposit of \$550.00 on December 1, 2008. The female Tenant signed the move-in / move-out inspection report assigning her security deposit and pet deposit towards unpaid rent on August 22, 2009.

The Landlord provided testimony that the Tenants were repeatedly late paying their rent. The Landlord referred to his documentary evidence of photocopies of the Tenant's cheques that were returned showing either NSF or stop payment. The photocopied cheques were dated 2009-07-31, 2009-03-31, 2009-05-29, and 2009-06-30. The Landlord confirmed that two 10 Day Notices to End Tenancy were issued to the Tenants for \$1,100.00 unpaid rent and dated July 20, 2009 and August 22, 2009. The Landlord argued that the Tenants owe four months of unpaid rent for April, June, July and August.

When I questioned the Landlord about why he issued 10 Day Notices listing only \$1,100.00 of unpaid rent for both July and August the Landlord became upset and told me that the photocopies of returned cheques was his proof. When asked to provide

testimony on the dates rent was paid and returned the Landlord advised that he did not have access to payment information during the hearing.

The Landlord testified that he was able to re-rent the rental unit as of October 1, 2009 and that the Landlord had to reduce the rent by \$100.00 per month in order to rent it. The Landlord is seeking loss of rent of \$1,100.00 for September 2009 and \$100.00 for the three months remaining in the fixed term lease period (October, November, and December) which the Landlord is receiving lower rent for.

The Landlord is seeking \$329.95 in unpaid utilities for water, sewer and garbage pickup. The Landlord referred to his documentary evidence of utilities bills for both sides of the duplex and advised that it was his procedure to call the Tenants from each side of the duplex to request payment for ½ of the utility bills. The Landlord argued that these Tenants have never paid the Landlord money towards utilities. The Landlord confirmed the first written demand for utilities was issued with his application for dispute resolution.

The Landlord advised that the remainder of his claim relates to damages and losses incurred in cleaning and repairing the rental unit. The Landlord referred to his picture evidence and the move-in inspection report during his testimony. The Landlord argued that some of the more expensive work has not been completed yet because of the costs involved; however the Landlord submitted estimates or quotes to have the work completed at a later date.

The remainder of the Landlord's claim is as follows:

- a) An estimate was provided to replace seven venetian blinds at a cost of \$760.20. The existing blinds are approximately seven years old and were damaged by the Tenants. The blinds have not been replaced to date.
- b) When the Landlord gained possession of the rental unit he noticed that the sink drains and toilet were not draining properly and found that the main sewer drain was plugged with dirt, cigarette butts, and items not normally put down the sewer. The Landlord provided an invoice in support of his claim for \$204.75 to have the main sewer main unplugged on September 14, 2009.
- c) The Landlord argued that he had to replace the oven as it was beyond cleaning. The Landlord testified that a new oven was purchased on September 2, 2009 for a cost of \$504.35 and referred to his documentary evidence in support of his claim. The previous oven was approximately 10 years old.
- d) The Landlord testified that he had to pay to have the carpets cleaned to prepare for the new tenants to take possession, at a cost of \$336.00 and was completed on September 2, 2009.

- e) The Landlord referred to his picture evidence to support his testimony that the Tenants caused a large tear in the carpet near the dining room and lived in such filth that the carpets were stained beyond repair or cleaning. The Landlord has provided an estimate for the replacement of the carpet at a cost of \$1,743.68. The Landlord testified that the existing carpets are a good quality berber and are approximately six years old and were in excellent clean condition at the onset of the tenancy.
- f) The Landlord advised that he hired a local handyman to remove the garbage that was gathered from inside and outside the rental unit and piled outside for removal. There were two invoices involved dated September 3, 2009 and September 7, 2009 for a total amount of \$395.00. (\$120.00 + \$275.00)
- g) An estimate to repair the lawn was provided in the amount of \$683.00. This estimate was provided by a Company for which the Landlord is partners in with his father. The work has not been performed. The Landlord testified and referred to the tenancy agreement addendum which states “e) The back yard is yours to use and enjoy. Please keep the yard tidy and clean”. The Landlord argued that the Tenants had an above ground swimming pool which killed the grass underneath. The Landlord also argue that the Tenants did not water or maintain the lawn anywhere in the yard.
- h) The Landlord argued that his company, partnered with his father, hired subcontractors to clean the rental unit, patch and paint the entire rental unit, and pick up dog waste at a cost of \$2415.00. The Landlord argued that he oversaw all of the work being performed and was able to get decent rates for labour work as his company is in the building industry and has access to several contractors. The rental unit was previously upgraded in 2007 at which time it was painted entirely.
- i) The Landlord is also seeking recovery of the \$100.00 filing fee.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss, which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Landlord contends that his evidence of photocopied cheques supports his claim for unpaid rent for the months of April, June, July, and August 2009. I note that both 10 Day Notices to End Tenancy issued on July 20, 2009 and August 22, 2009 each show that the Tenants have failed to pay \$1,100.00 for rent, an amount equal to one month's rent. I also note that the string of e-mails between August 3, 2009 and August 21, 2009, sent by the Landlord and replied by the female Tenant, make reference to an outstanding rent amount of \$1,100.00. The evidence supports that the Tenant signed over her security and pet deposits in payment towards unpaid rent on August 22, 2009.

I do not accept the Landlord's argument that a photocopy of a returned cheque is evidence that rent remained unpaid for several months. In the absence of testimony or evidence to support that there was an accumulated short fall of rent and in the presence of the 10 Day Notices and the above mentioned e-mails, I find on a balance of probabilities that as of August 21, 2009 the August 2009 rent was outstanding in the amount of \$1,100.00. I further find that the Tenant paid the August 2009 rent in full when on August 22, 2009 the female Tenant signed over her security deposit and pet deposits as payment of rent. In the presence of my findings that rent has been paid in full, I hereby dismiss the Landlord's claim for \$3,300.00 of unpaid rent.

Section 26 provides that a tenant must pay rent when rent is due while section 45 provides that a fixed term tenancy does not end earlier than the date specified in the tenancy agreement as the end of the tenancy. In this case the fixed term was scheduled to end on December 1, 2009 however the Tenants vacated the rental unit on August 31, 2009. I accept the Landlord's testimony that he was not able to re-rent the unit until October 1, 2009 at a lower monthly rent causing the Landlord to suffer a loss of \$1,100.00 for September 2009 and an additional loss of \$100.00 per month for the remaining three months of the tenancy. Based on the aforementioned I find that the Landlord has proven the test for damage or loss, as listed above, and I hereby approve his claim for loss of rent in the amount of \$1,400.00 (\$1,100.00 + \$300.00).

The tenancy agreement provides that water, electricity, garbage collection, and heat are "not" included in the rent. I accept the Landlord's testimony that the Tenants have failed to pay him for the water, sewer, and garbage. I find that the Landlord has proven the

test for damage and loss and award him the cost of utilities in the amount of \$280.64 (\$104.94 Jan-Mar 2009; \$103.08 April-June 2009; \$72.62 Jul-Aug 2009).

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

The evidence supports that the existing blinds were approximately seven years old and in good condition at the onset of the tenancy. However at the end of the tenancy some blinds were missing while the remaining blinds were damaged. The estimated cost to replace the seven blinds, of various sizes, is \$760.29. The Residential Tenancy Policy Guideline (RTPG) provides the normal life expectancy of venetian blinds is ten years leaving three years life remaining in the original blinds. Based on the aforementioned I approve the Landlord's claim in the amount of \$228.08 (3/10 of the estimate replacement cost).

Section 32 of the Act provides that the Tenant is responsible to repair and maintain the rental unit if the damage is caused by actions or neglect of the tenant or a person permitted at the rental unit by the tenant. In the situation of the sinks and toilet not draining properly and the main sewer drain found to be plugged with dirt, cigarette butts, and items not normally put down the sewer, I find that the Landlord has proven the test for damage and loss as listed above and I approve the Landlord's claim in the amount of \$204.75.

The Landlord has claimed the replacement cost of the oven arguing that the oven was beyond cleaning. The approximate age of the oven is ten years old. The RTPG provides the useful life of an oven to be fifteen years. The evidence supports that there was an existing issue with the oven whereby the move-in inspection report lists the condition of the oven as "still has grease inside". Given the age of the oven and the presence of a pre-existing issue with a greasy oven at the onset of the tenancy, I find the Landlord has failed to prove that the Tenants are solely responsible for the condition of the oven. Based on the aforementioned I find that the Landlord has failed to prove the test for damage or loss as listed above and I dismiss their claim of \$504.35.

The Residential Tenancy Policy Guideline # 1 provides that a tenant is responsible for periodic cleaning of the carpets throughout the tenancy and generally at the end of the tenancy. The evidence supports that the carpets were not maintained during the tenancy and were not cleaned at the end of the tenancy. I find that the Landlord has

proven the test for damages and suffered a loss of \$336.00. I hereby approve the Landlord's claim.

The Landlord is seeking the costs to replace the existing carpets and has proven that the Tenants have caused damage to these carpets by creating a rip in one section of the carpet in an area where if it were to be replaced would account for approximately $\frac{1}{4}$ of the carpet. The existing carpets are approximately six years old and were in good clean condition at the onset of the tenancy. The RTPG provides that the useful lifespan of carpet is ten years. I find that the Landlord has proven the test for damage or loss and I hereby approve the Landlord's claim in the amount of \$174.37 ($\$1,743.68 \times \frac{4}{10} \times \frac{1}{4}$).

The Landlord has proven the test for loss in relation to costs incurred to have the waste removed from the rental unit at the end of the tenancy and so I approve his claim in the amount of \$395.00. ($\$120.00 + \275.00)

The Landlord is seeking monetary compensation to repair the back lawn claiming that the Tenants violated the terms of their tenancy agreement by installing an above ground pool which caused damage to the lawn underneath. I note while the tenancy agreement addendum states "e) the back yard is yours to use and enjoy. Please keep the yard tidy and clean" this does not constitute evidence to support that the Tenants breached their tenancy agreement by setting up an above ground pool. Based on the aforementioned I find that the Landlord has failed to prove the test for damages and loss and I dismiss their claim of \$683.00, without leave to reapply.

The Landlord is seeking \$2415.00 in costs to clean the rental unit, patch and paint the entire rental unit, and pick up dog waste at the rental unit. The Landlord submitted a hand written invoice issued by the Landlord's company in the amount of \$2415.00 however the Landlord has failed to provide proof of the actual costs he incurred to have this work completed. The testimony supports that the work was completed by sub contractors and not by the Landlord's employees and that these sub contractors billed the Landlord's company for the work performed. In the absence of supporting documentation such as the subcontractor invoices I find that the Landlord has failed to prove the actual costs incurred to rectify this damage and I dismiss the Landlord's claim of \$2415.00. That being said I find that the Landlord has proven that cleaning was required to both the interior and exterior of the rental unit and I hereby award the Landlord \$960.00 (32 hours for interior cleaning and 16 hours for exterior cleaning @ \$20.00 per hour), in accordance with Section 67 of the Act.

As the Landlord has been primarily successful with his application I award the Landlord recovery of the \$100.00 filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim as follows:

Loss of Rent for September @ \$1,100.00 plus \$100.00 for each of October, November, and December 2009.	\$1,400.00
Unpaid utilities	280.64
Venetian blind replacement	228.08
Cost to unplug sewer main	204.75
Carpet cleaning	336.00
Replacement of damaged carpet	174.37
Waste removal costs	395.00
Cleaning costs	960.00
Filing fee	<u>100.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD	\$4,078.84

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 **\$4,078.84**. The Order must be served on the respondent Tenant 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: January 5, 2010

Dispute Resolution Officer