

DECISION

Dispute Codes MNR MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent, for damage to the unit, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on October 5, 2009. Mail receipt numbers were provided in the Landlord's evidence. The Tenants are deemed to be served the hearing documents on October 10, 2000, the fifth day after they were mailed as per section 90(a) of the *Act*. The Tenant acknowledged receipt of the hearing documents.

The Landlord, Resident Property Manager, and the female Tenant (Tenant) appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their 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 an Order under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy agreement began on February 1, 1993 and ended when the Tenants vacated the rental unit at the end of February 2008. The Tenants were not

required to pay a security deposit for this rental unit and had been long term Tenants of the Landlord in this and other rental units.

The Resident Building Manager testified that he approached the Tenants sometime near the end of February 2008, when he witnessed them moving their possessions out of the rental unit. The Resident Manager stated that he clarified with the Tenants that they were vacating the rental unit.

The Landlord testified that the Tenants did not provide notice that they were ending the tenancy and the Tenants did not attend the move-out inspection despite being served with the final notice of opportunity to attend. The Landlord referred to her documentary evidence of the move-in and move-out inspection form and the photographic evidence of the condition of the rental unit at the end of the tenancy.

The Tenant testified and confirmed that she did not provide the Landlord with written notice that they were ending the tenancy. The Tenant then argued that she spent two days cleaning the rental unit prior to moving out and that she felt the photos were taken during someone else's tenancy. The Tenant confirmed that she did not have evidence to support that she cleaned the rental unit.

The Resident Building Manager stated that he personally did the move out inspection, in the absence of the Tenants, and that he personally took the photos during the move out inspection on February 29, 2008.

The Landlord is seeking \$505.00 for loss of rent for March 2008 as the Landlord was not able to re-rent the unit due to the lack of notice and work required to clean the rental unit.

The balance of the Landlord's claim of \$362.79 is comprised of \$82.79 of charges arising from a previous tenancy agreement at a different location, \$15.00 to repair an interior door in 2004 for which the Landlord did not know the age of the door, \$45.00 to

repair a toilet in 2003 for which the Landlord did not know the age of the toilet, \$60.00 to dispose of a fridge owned by the Landlord for which the Landlord did not know the age of nor did the Landlord provide evidence in support of why the fridge had to be discarded.

The Landlord advised that the rental unit was built in 1969 and that repairs are conducted as needed. The Landlord stated that she did not have records as to when articles were repaired or replaced and that they repair or replace items as required throughout the tenancies.

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

After careful review of the evidence before me I find that the Tenants failed to comply with section 45 of the Act which stipulates that a tenant may end a periodic tenancy by

giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice. Based on the aforementioned, the Landlord has met the test for damage or loss as listed above and I hereby approve their claim for loss of March 2008 rent in the amount of \$505.00.

The Landlord has claimed \$82.79 in damages for charge backs relating to a different tenancy agreement which ended prior to February 1, 1993. I find that this claim has no merit with the Landlord's current application for dispute resolution and does not meet the limitation requirements as provided in section 60 of the Act. Therefore I dismiss the Landlord's claim of \$82.79, without leave to reapply.

The evidence and testimony supports that the rental unit required cleaning before the Landlord could rent the unit to new tenants. I therefore find that the Tenants failed to comply with section 37 of the Act which provides that a tenant must leave the rental unit reasonably clean and undamaged at the end of the tenancy. Based on the aforementioned I find that the Landlord has proven the test for damage or loss and I hereby approve the Landlord's claim of \$160.00 to clean the rental unit.

The remaining \$120.00 of the Landlord's claim pertains to damages to the rental unit and appliances. 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 Landlord was not able to provide testimony or evidence in support of the age of the items being claim and therefore failed to prove the test for damage and loss, as listed above. Therefore I hereby dismiss the Landlord's claim of \$120.00 in damages, without leave to reapply.

As the Landlord has partially been successful with their application I award recovery of \$25.00 of the filing fee.

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

Loss of rent for March 2008	\$505.00
Cleaning costs	160.00
Filing fee	25.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$690.00

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 \$690.00. The order must be served on the respondent Tenants 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 29, 2010.

Dispute Resolution Officer