Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

<u>Dispute Codes</u>   MNR, MND, MNSD, FF

<u>Introduction</u>

This hearing dealt with an Application for Dispute Resolution by the Landlords for monetary orders for unpaid rent, for compensation under the Act and the tenancy agreement for damages to and cleaning of the rental unit, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Although duly served with the Application for Dispute Resolution and Notice of Hearing by registered mail, sent on October 18, 2009, and deemed under the Act to be received on October 23, the Tenants did not appear. I find the Tenants have been served in accordance with the Act.

The Landlords appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

<u>Issue(s) to be Decided</u>

Are the Landlords entitled to monetary compensation from the Tenants?

<u>Background and Evidence</u>

Based on the affirmed testimony and the evidence provided by the Landlords, I find that the Tenants were ordered to vacate the rental unit for unpaid rent.

The Tenants vacated the property, however, the Landlords were not paid for September 2009 rent.

The Landlords claim they will incur substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenants.

The Landlords claim for $1,300.00 in unpaid rent, and approximate $3,200.00, for cleaning and repairs. They have performed the cleaning, however, they have estimated the costs of repairs and none of the repair work has been performed.

In evidence the Landlords provided a copy of the tenancy agreement, Notices to End Tenancy, and photographs.

Analysis

Based on the foregoing, the testimony and evidence, and a balance of probabilities, I find that the Tenants have breached the Act and tenancy agreement by failing to pay rent and this has caused a loss to the Landlords.

I find the Landlords have established claims for unpaid rent and to keep the security deposit. However, the Landlords provided no invoices, or estimates, for the costs of cleaning and repairs.

When making a claim for cleaning or damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim, in this case, the Landlords. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In this case the Landlords have not provided verification of the actual loss or damage claimed. Therefore, I dismiss this portion of their claim, with leave to reapply.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlords have established a total monetary claim of **$1,350.00** comprised of rent for September of 2009, and the $50.00 fee paid for this application.

I order that the Landlords retain the deposit and interest of **$641.94** in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **$708.06**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Landlords have leave to apply again for the costs of cleaning and repairs.

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: February 11, 2010.

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Dispute Resolution Officer