



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent, the tenant and his agent.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost rent; for damages and cleaning; compensation for advertising the rental unit; costs associated with this hearing; and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution and for a previous Application, pursuant to sections 32, 35, 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on September 1, 2008 as a 1 year fixed term tenancy for a monthly rent of \$4,000.00 per month due on the 1st of the month with a security deposit paid on September 1, 2008 in the amount of \$2,000.00.

The landlord issued a 1 Month Notice to End Tenancy for Cause on November 10, 2008 with an effective vacancy date of December 31, 2008, citing the rental unit must be vacated to comply with a government order.

Subsequently, the tenants were issued a 10 Day Notice to End Tenancy for Unpaid rent when they failed to pay the rent due on December 1, 2008. By the tenant's testimony they vacated the property on December 15, 2008 in compliance with the 10 Day Notice. The landlord was granted a monetary order for December 2008 rent on December 31, 2008.

The landlord submitted the following documents into evidence:

- A copy of the tenancy agreement signed by the parties on September 1, 2008;

- A copy of a Condition Inspection Report completed on move in on September 1, 2008 signed by the tenant. The declaration stating the tenant agrees that this report fairly represents the condition of the rental unit is incomplete.
- Various receipts for repair work, cleaning and garbage removal, locksmith charges, advertising the rental unit beginning January 14, 2009 to March 6, 2009 with differing rental amounts, electrical work; stain and supply; service of documents dated December 17, 2008; Dispute Resolution Services; investigation services;
- An estimate for repairs to the driveway/lawn; and
- A copy of the previous monetary order for unpaid rent; and
- 12 faxed and undated photographs of the condition of the residential property.

The following table outlines the landlord's claim

Description	Amount
Lost Rent	\$12,000.00
Repairs (doors, walls, floors windows, etc)	\$825.00
Patching & painting	\$275.00
Painting materials	\$33.24
Repair front grass lawn	\$350.00
Replaced damage lighting	\$150.27
Cleaning	\$203.00
Removing furniture and garbage	\$260.00
Changing locks (labour & materials)	\$76.88
Advertising	\$527.02
Registered Mail	\$57.77
Investigation Services to locate tenants	\$600.00
Filing fee for May 2009 Dispute Resolution Services	\$100.00
Total	\$15,458.18

The landlord testified that when the tenants moved out the landlord could not find them in order to discuss the condition of the property. The landlord testified that the property was not cleaned and there was damage to the point where the property could not be rented in January, February or March of 2009.

The landlord's evidence included receipts for a number of items that were repaired but could not provide a description of the problems or the repairs that were made. For example, the landlord submitted a receipt from an electrician and when questioned about the repairs the electrician made the landlord stated it was for repairs to the bathroom light. The job description at the bottom of the invoice states it was for lights in the upstairs hall, to fix a 3-way switch in the kitchen and to fix a motion sensor.

The landlord, in response to some of my questions, stated she wasn't sure or it was a long time ago and she cannot remember. She also responded to most of my queries

regarding how she knew the damage had been caused by the tenants by stating that the items were not damaged at the start of the tenancy.

The tenant submitted into documentary evidence the following:

- A copy of the 1 Month Notice to End tenancy dated November 10, 2008 with an effective vacancy date of December 31, 2008, citing rental suite must be vacated to comply with a government order, with attached municipal bylaw;
- An email from the landlord to the tenants regarding the condition of the rental unit dated September 19, 2008;
- 10 photographs of the rental unit and descriptions of the pictures; and
- A witness statement signed by a neighbour.

The tenants testified that the damage to the lawn/driveway depicted in both parties photographs, was caused partly by the landlord. The tenant provided a photograph with the landlord's truck on the lawn/driveway.

The tenants did confirm that they had left a couch and mattress and that they had left garbage in the rental as it was part of the tenancy agreement that the landlord would be responsible for garbage collection, they left the garbage in the kitchen to protect from racoons if they had left it outside.

Analysis

Despite the tenancy agreement being for a fixed term tenancy the fact the landlord ended the tenancy by issuing a notice to end tenancy for cause to comply with a government order that had nothing to do with the tenants; I dismiss the landlord's claim to lost rent.

In relation to the landlord's claim for compensation for investigation services, registered mail and advertising the rental unit resulting from the landlord ending the tenancy, I find these expenses to be costs of doing business and dismiss this part of the landlord's application.

In the face of conflicting testimony and no additional corroborating evidence I find the landlord has failed to adequately show that damage was caused by the tenants for the repairs, patching and painting, painting materials and front grass lawn or that the work completed was directly related to any damage shown at the hearing. I dismiss the landlord's claim to these expenses.

During the hearing the tenant confirmed that the photographs taken by the landlord fairly represented the condition of the rental unit when the vacated the property. This includes leaving garbage bags in the kitchen, food in the fridge, a mattress in the hallway, a couch under the deck.

Section 37 of the *Act* states when a tenant vacates a rental unit, he must leave the unit reasonably clean and undamaged except for reasonable wear and tear, and give the landlord all the keys in possession and control of the tenant. Despite the statement in the tenancy agreement that garbage removal was included in the tenancy, the *Act*, speaks specifically to the end of the tenancy.

As a result of leaving the garbage at the end of the tenancy, I find the tenants are responsible for the costs incurred by the landlord for cleaning and garbage removal, in the amount of \$463.00 claimed by the landlord.

The Residential Tenancy Policy Guidelines stipulate that a landlord is responsible for changing locks on a rental unit if a new tenant requests the locks be changed. However, the guidelines go on to say that if locks are damaged by the actions of the tenants, then the tenant is responsible. The guidelines also state the tenant must return all keys provided by the landlord and cut by the tenants at the end of the tenancy.

I find that the failure of the tenants to return all of the keys to the landlord resulted in the landlord being required to change the locks regardless of any potential requests by new or future tenants.

However, I find the dollar amount unreasonable. The landlord submitted a receipt for a locksmith, including 2 hours labour for \$26.88 and is claiming \$76.88. I find the landlord entitled to \$26.88.

And finally, in relation to the landlord's claim to \$100.00 filing fee for his Application for Dispute Resolution submitted in May, 2009, the landlord had submitted his request for recovery of that fee in his application submitted in May 2009 and as such, the matter has been dealt with in a previous hearing. I dismiss this portion of the landlord's claim.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I therefore grant a monetary order in the amount of **\$530.88** comprised of \$463.00 for cleaning and garbage removal; \$26.88 for changing locks; and, as the landlord was only partially successful in his application, \$50.00 of the \$100.00 fee paid by the landlord for this application. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: February 15, 2010.

Dispute Resolution Officer