

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for unpaid rent, for damage to the unit, to keep the security deposit in partial satisfaction of their claim, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenants.

Service of the hearing documents was done in person by the Landlord to the female Tenant on November 11, 2009 at the female Tenant's place of employment.

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

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order a) for unpaid rent, and b) for damage to the unit, and c) to keep the security deposit in partial satisfaction of their claim, and d) for money owed or compensation for damage or loss under the Act in accordance with sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The tenancy was a fixed term tenancy agreement effective July 1, 2009 and was set to expire or switch to a month to month tenancy after June 30, 2009. The Tenants paid a security deposit of \$525.00 on June 18, 2009. A move-in inspection report was completed on June 20, 2009 and signed by the female Tenant and a move-out inspection report was completed on November 2, 2009 in the absence of the Tenants.

The Landlord testified that when the Tenants failed to pay rent for November 2009 the previous resident manager attended the rental unit and found on November 2, 2009 that both Tenants had vacated the rental unit leaving the unit dirty, damaged and abandoned garbage and possessions. The Landlord stated that he believes the male Tenant moved out approximately two weeks before the female Tenant moved.

The Landlord is seeking \$1,050.00 for loss of November 2009 rent, \$525.00 in liquidated damages, and \$669.00 in damage and loss as follows:

- \$95.00 for professional carpet cleaning
- \$120.00 to clean the rental unit which is comprised of 8 hours at \$15.00 per hour. The Landlord stated the cleaning was performed by their staff.
- \$24.00 for cleaning materials
- \$150.00 to paint the rental unit – The Landlord testified that the rental unit had been painted sometime shortly before the tenancy began. The Landlord confirmed that there is no evidence to support when it was painted or what was required to be painted at the end of the tenancy
- \$50.00 to repair holes – The Landlord stated that this amount was for materials to repair the holes in the walls
- \$200.00 for the removal of garbage to the Landfill.

The Landlord testified and confirmed that there was no supporting evidence provided in support of the amounts claimed other than the move-in / move-out inspection report and the tenancy agreement.

The Landlord confirmed they have advertised the unit in the local newspapers and on two web advertising sites however the rental unit was not re-rented until March 1, 2010 for \$1,025.00 per month. The Landlord argued that this particular rental building is difficult to rent given its location.

Analysis

All of the testimony and documentary evidence was carefully considered.

The evidence supports the Landlord served the hearing documents, in person, to the female Tenant and that no documents were served to the male Tenant.

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 has applied for 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. 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.

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 evidence supports the Tenants abandoned the rental unit prior to the end of the fixed term tenancy and did not provide the Landlord with payment for November 2009 rent in contravention of section 45 of the Act. Based on the aforementioned I find the Landlord has proven the test for damage or loss as listed above and I approve their claim for \$1,050.00 of loss of rent for November 2009.

The testimony confirms the Landlord attempted to mitigate their losses by advertising the rental unit and lowering the monthly rent to attract new renters. The Landlord is seeking \$525.00 in liquidated damages to cover costs for advertising and re-renting the unit. When considering liquidated damages I must consider that the agreed upon amount is a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In this case there is evidence to support the Landlord has knowledge that this rental building is located in an area where it is difficult to attract new renters and would be reasonable for the Landlord to estimate their losses at \$525.00 if the fixed term tenancy was broken. Based on the aforementioned I find the Landlord has proven the test for damage or loss and I approve their claim of \$525.00 in liquidated damages.

The move-in and move-out inspection reports support that the rental unit was not cleaned at the end of the tenancy and there was garbage left in the rental unit when the Tenants abandoned the unit. The Landlord is seeking \$120.00 for eight hours of labour their staff provided to clean the unit. I find that the Landlord has proven the test for damage or loss and I approve their claim in the amount of \$120.00.

The remainder of the Landlord's claim is comprised of \$95.00 carpet cleaning, \$30.00 blind and drapery cleaning, \$24.00 cleaning materials, \$150.00 painting, \$50.00 materials to repair holes in the walls, and \$200.00 removal of garbage to the landfill. I note the Landlord did not provide evidence such as copies of invoices, receipts, or photographs to verify when the work was performed, who performed the work, and the actual cost incurred by the Landlord. Therefore I find the Landlord has failed to prove the test for damage or loss, as listed above, and I dismiss their claim of \$549.00 (\$95.00 + \$30.00 + \$24.00 + \$150.00 + \$50.00 + \$200.00).

As the Landlord has been partially successful with their application I hereby award the Landlord recovery of the \$50.00 filing fee.

Monetary Order – I find that the landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit as follows:

Loss of rent for November 2009	\$1,050.00
Liquidated damages	525.00
Cleaning costs	120.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,745.00
Less Security Deposit of \$525.00 plus interest of \$0.00	-525.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,220.00

Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim against the female Tenant. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,220.00**. The order must be served on the respondent and is enforceable through 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: March 18, 2010.

Dispute Resolution Officer