

## **DECISION**

Dispute Codes            MND, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order to recover unpaid rent, and for damages to the rental unit, site or property, an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent to the tenants by registered mail on November 18, 2009.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order to recover the cost of carpet cleaning?
- Is the landlord entitled to keep all or part of the tenants security deposit?

### Background and Evidence

This tenancy started on August 01, 2009. This was a fixed term tenancy which was due to expire on July 31, 2010. The tenants paid a monthly rent of \$850.00 which was due on or before the first of each month in advance. The tenants paid a security deposit of \$425.00 on July 20, 2009 and a pet damage deposit of \$250.00 on August 01, 2009. The tenants vacated the rental unit on October 31, 2009.

The landlords' agent testifies that the tenants ended the tenancy before the end of the fixed term. The landlord states that she received a telephone call from the tenants on October 09, 2009 with a complaint about the tenants living upstairs making too much noise. The landlords'

agent contacted the upstairs tenants who did confirm that their children were noisy. The landlords' agent states that she then got a letter from the tenants giving her notice to end the tenancy. This letter was dated October 19, 2009 and the tenants moved out on October 31, 2009.

The landlords' agent states that she was not given opportunity to do anything about the noise issue and only had one conversation with the tenants before they gave her the letter to end tenancy. The landlord seeks a loss of rental income for November and December, 2009 and January, 2010 to a total amount of \$2,550.00. The landlord has provided evidence of the landlords' attempts to re-rent the unit since the end of the tenancy but to date it remains empty.

The landlords' agent claims that the tenants left the carpets in a dirty condition at the end of the tenancy. The landlords' agent acknowledges that the tenants did attempt to clean the carpets with their own steam cleaner but this was not very successful and the carpets remained dirty and stained. A move in and move out condition inspection was carried out. The landlord seeks the cost of cleaning the carpets to a sum of \$105.00.

The tenants testify that the upstairs tenants made excessive noise from early in the morning with loud crashing, banging, children running around, loud music and movies playing with a surround sound system. This disturbed the tenants who could not have a normal conversation in their own living room. This noise was so loud it made things shake in the tenant's downstairs unit. The tenant's state they first attempted to contact the upstairs tenants about the noise but these tenants could not hear the phone ringing or the door bell to their rental unit due to the noise.

The tenants claim that this noise has exasperated their five year old daughters' medical condition and their daughter did not sleep well, had nightmares when she did sleep and was banging her head. The noise levels from upstairs caused their daughter to become very stressed which made her medical condition worse. The tenants have sent in a letter from their family doctor in support of the family which states that it was his recommendation that the family move to escape the noise factor as it was affecting the child's health and sleep.

The tenants claim that they spoke to the landlords' agent on one occasion about the noise but she did little to improve the situation. They state they also spoke to the owner of the property

who contacted the upstairs tenants but again nothing was done to protect their right to quiet enjoyment. The tenant's state they spoke to the upstairs tenants themselves asking them to keep the noise down and to control her children, but the noise continued and the upstairs tenants then started to make things uncomfortable for their visitors by shining a torch into their eyes when they pulled up on the driveway. The tenants have provided letters concerning the high noise levels from guests in their home that experienced this first hand. The tenants claim they gave the landlord and the landlords' agent opportunity to deal with the noise from the upstairs tenants but after a period of time trying to deal with it they decided on advice from their doctor to move out. The tenants agree they did not give the landlord one months notice but did give notice in writing and outlined the reasons why they had to terminate their lease.

The tenants state that they had permission from the owners to use their steamer to clean the carpets. She states she did sign the condition inspection report at the end of the tenancy. The tenants also state that before they moved out the owners came in and did some painting and cut baseboards in the unit which also created dirt on the carpets.

### Analysis

I have reviewed the evidence presented for this hearing including the verbal testimony of both Parties; with regard to the landlord claim for loss of rental income for three months to a total sum of \$2,550.00 I refer both Parties to #6 of the Residential Tenancy Policy Guidelines.

This guideline deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment "promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy."<sup>1</sup> A landlord does not have a reciprocal right to quiet enjoyment.

The Residential Tenancy Act establishes rights to quiet enjoyment, which include, but are not limited to:

- Reasonable privacy
- Freedom from unreasonable disturbance.

The tenants argue that the tenants living upstairs breached their right to quiet enjoyment of their rental unit and this was so severe it affected the health of their daughter and the family use of their rental; unit. The tenants also claim that despite them informing the landlords' agent and the owner of the property directly neither of them did anything to ensure the tenant's right to quiet enjoyment was upheld.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists. In this instance I find the landlord was notified by the tenants about this problem and did not take reasonable steps to correct the actions of the tenants living in the property upstairs. They could not reasonable assume the tenants could continue to live with these high noise levels. Consequently I find the noise levels were substantially enough to cause the tenants to end the tenancy and constitute a breach of the covenant of quiet enjoyment and the tenants are therefore entitled to end the tenancy pursuant to section 44(1)(f) of the *Act*.

With regard to the landlords application to recover the cost of \$105.00 for carpet cleaning; I find both the landlords agent and tenant agree that the tenant did attempt to clean the carpets at the end of the tenancy however this was not done successfully and as a result the landlord had to pay to have the carpets cleaned again. A move in and move out condition inspection was carried out and the tenant did sign this report agreeing to the condition of the rental unit at the end of the tenancy. The tenants have provided no evidence that the landlords created more dirt on the carpets at the end of the tenancy. Consequently, I uphold the landlords request to recover the cost of carpet cleaning pursuant to section 67 of the *Act*.

The landlord has requested to keep all or part of the tenants' security deposit to cover damages to the rental unit. I find the landlord has established her claim for carpet cleaning and may deduct the amount of **\$105.00** from the security deposit.

The landlord has applied to recover the \$50.00 filing fee paid for this application. As the landlord has only been partially successful with her claim I find she is entitled to recover half the filing fee to a sum of **\$25.00** from the tenants. I Order the landlord to deduct this amount from the security deposit as follows:

Security deposit and pet damage deposit	\$675.00
Less half of the filing fee	(-\$25.00)
<b>Total amount of security deposit to be</b>	<b>\$545.00</b>

returned to the tenants	
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Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A monetary award of **\$130.00** may be deducted from the tenant's security and pet damage deposits leaving a balance **\$545.00** which must be returned to the tenants.

The landlords claim for unpaid rent of \$2,550.00 is dismissed without leave to reapply.

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 23, 2010.

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Dispute Resolution Officer