

DECISION

Dispute Codes MNR, MND, MNSD, 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 landlords and the tenant.

The hearing was originally scheduled for February 9, 2010 at which time the tenant declared she had received the notice of hearing but not the evidence package submitted by the landlord. The hearing was adjourned for the landlord to serve the evidence package to the tenant.

At the start of the reconvened hearing the tenant confirmed that she had received the landlord's evidence.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the residential property; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord has submitted into evidence the following documents:

- A partial copy of a tenancy agreement signed by the parties on July 1, 2009 for a month to month tenancy beginning on July 1, 2009 for a monthly rent of \$1,650.00 due on the 1st of the month, a security deposit of \$825.00 was paid on June 20, 2009 and a pet damage deposit of \$825.00 was paid on June 23, 2009;
- A copy of a Condition Inspection Report completed and signed by both parties on July 1, 2009 for the move in condition inspection and signed by the landlord on September 30 for the move-out inspection. The report indicates paint on the ceiling and floor in most rooms, unfinished painting in one bedroom, a dirty door in the entry and a bedroom as well as dirty tracks from closet doors and light fixtures, garbage left behind; dog feces and cedars cut down; dirty washer and dryer, window tracks dirty;
- A copy of a note dated September 21, 2009 from the landlord inviting the tenant to a move out inspection set for September 30, 2009;

- A copy of a note dated September 22, 2009 from the landlord to the tenants advising of a schedule for showing the rental unit to potential tenants and requesting the tenants not speak with the potential tenants;
- A copy of a letter from the tenant to the landlord dated August 25, 2009 indicating the tenants are settling into the house nicely but had a couple of issues they wanted the landlord to look into;
- A copy of a letter from the tenant to the landlord dated September 18, 2009 providing notice that they would be moving out by September 30, 2009;
- A copy of a letter from the landlord to the tenant dated September 29, 2009 responding to the tenants letters of August 25, 2009 and September 18, 2009;
- A copy of a water bill for service from June 27, 2009 to September 4, 2009 in the amount of \$134.08 and a per diem calculation for the during of the tenancy in the amount of \$177.51;
- A copy of a tenancy agreement with a third party beginning on October 15, 2009;
- A copy of a move out cleaning price and expectation list;
- A copy of a bill for removal of stumps, brush, and planting of trees in the amount of \$230.00;
- Receipt for pressure treated lumber, locks, construction adhesive and a safety hasp for a total value of \$308.48;
- A receipt for a light cover for the master bedroom in the amount of 37.48;
- A note from the landlord to the tenant dated October 14, 2009 returning the tenant's post dated rent cheques for October 1, 2009 to February 1, 2010; and
- 30 undated photographs of the interior of the rental unit and the residential property.

The tenant testified that they had given short notice to end the tenancy for several reasons, including the discovery of that the landlord had the property for sale despite assurances prior to and after entering into the tenancy agreement; the landlord had dumped rotten apples on the property (for composting according to the landlord); animal feces found in the attic.

The landlord testified that they had not planned to sell the property but they had been approached by a developer and decided to put it on the market. She did also state that it had been on the market prior to the tenancy and that they took it off the market in May of 2009.

A condition inspection was completed both at move in and at move out, however, the tenants did not sign the move out inspection report. The tenant testified that they did not signed it has they disagreed with the findings and the landlord was insisting on deductions that they disagreed with.

The landlord's claim is outlined in the following table:

Description	Amount
Short notice rent	\$825.00

Water bill	\$177.51
Cleaning and garbage removal	\$246.00
Painting	\$75.00
Damage to landscape	\$280.00
Damage to the house (including labour)	\$584.97
Pet damage (carpet, feces from yard)	\$210.00
Loss of Privacy	\$5,000.00
Total	\$7,398.48

The tenant does not contest that they provide their notice to end the tenancy on September 18, 2009 with an effective date of September 30, 2009. The tenant does not dispute the water bill.

The landlord testified that it took 8 hours to clean the property and she charges \$15.00 per hour for completion of the cleaning. During the hearing we referred to the landlord's photograph's relating to the cleaning, in particular there were pictures of the inside of the oven, the deck and stairs to the front door, the front door landing, and outside pathways.

No photographic evidence was provided for the light fixtures or appliances. In relation to the baseboards and floors, the landlord testified that it was careless painting that required cleaning. Photographic evidence was reviewed regarding the claim of paint spots on the floor and baseboards.

The landlord is also claiming for unfinished painting and for having to touch up poor edging on the ceiling and on the baseboards for 3 hours at \$25.00 per hour. The landlord did not provide any receipts for paint.

The landlord's claim for damage to the landscape is centered on two primary issues, the felling of cedar trees and the removal of retaining walls. The landlord provided no value for the removal of the retaining walls. The tenant testified that the only removal they did was where there were stones and rocks that required removal.

The landlord testified that tenants did not have permission to cut the trees. The tenant claims the landlord's husband gave permission when the landlord was out of the country. The husband testified at the hearing that he never once met with the tenants or discussed anything with them. The landlord testified that she has not replanted the trees.

The landlord stated the yard was filled with dog feces in all areas of the yard and there was carpet damage in the house, the landlord submitted a photograph of frayed carpet in the house, she also testified that she had replaced the carpet with a patch. The landlord did not submit a receipt for any carpeting.

The tenant testified that she had gone throughout the acre sized property and removed dog feces and that she asked the landlord to point out areas where there was any

during the move out inspection, the landlord did not point them out. The landlord did not provide any photographic evidence.

The landlord testified that the tenants had removed a light fixture to paint the walls but did not replace it on the walls because there were some screws missing. The landlord purchased a new light fixture and installed it. The landlord is charging labour for the installation of the light fixture; curtain rod; changing locks and for finishing the garage door.

The landlord is also claiming for locks (landlord stated tenants did not return key during inspection – tenants return the keys later that day) pressure treated lumber (with no explanation for what); and other assorted supplies with no explanation of what they are needed for.

The landlord is claiming for loss of privacy. The house is on a panhandled lot with a 2 story house in front of the rental unit. The landlord testified that the property now is visible from the street; the tenant disputes this testimony and contends that the property is still completely private.

Analysis

Section 45 of the *Act* allows a tenant to end a month to month 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 noticed. It must also be the day before the day in the month, that rent is payable.

As the tenant failed to give compliant notice to end the tenancy, I find that landlord did not receive notice that the tenant had decided to end the tenancy until September 18, 2009. As a result and in compliance with Section 45 of the *Act*, I find the effective date of the tenancy to be October 31, 2009.

However, the landlord has provided evidence that the property was re-rented to new tenants effective October 15, 2009. I am satisfied that the landlord was able to mitigate some lost revenue. I find the tenants remains responsible for rent for the period of October 1 to October 15, 2009 in the amount of \$825.00.

As the tenant does not dispute the landlord's claim for the water bill, I accept the tenant is responsible for the bill in the amount of \$177.51.

Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. This does not mean that the house must be in like new condition.

In relation to the landlord's claim for cleaning, I find the tenant has left the house and the property in a reasonably clean condition and has met this requirement under Section 37.

I am not persuaded by the landlord's testimony or evidence that the painting was incomplete or poorly edged. The landlord, while providing receipts for many items did not include receipts for any paint at all. I am also not convinced that tenants who were moving into a rental unit would only paint half a wall.

As to the damage to the landscape, as the landlord has not replaced any trees, I find that she has not suffered any loss as result of the felling of trees and is therefore not entitled to any compensation either for their replacement or for the loss of privacy. The landlord has made no monetary claim regarding the retaining walls and as such I find has suffered no loss.

In regard to the damages to the interior, I am not convinced the landlord needed to purchase a new light fixture only to replace screws or that the landlord suffered any loss for the installation of the light fixture or curtain rod.

I am not convinced there was a need for the landlord to change locks and according to the Residential Tenancy Policy Guidelines, landlords are responsible for changing locks at their own expense and only if requested by incoming tenants.

While I do agree the landlord should be compensated for the completion of the garage door, I am not convinced the compensation warrants \$150.00, claiming 6 hours at \$25.00 per hour. I find a more reasonable compensation would be in the amount of \$50.00.

To the landlord's claim for pet damage, I am not persuaded the landlord suffered any loss or damage. Despite several photographs of the yard submitted by the landlord there is not one picture showing any dog feces. The landlord states she patched the carpet but has submitted no receipts for carpeting or identified a labour cost.

Conclusion

Based on the above I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of \$1,077.51 comprised of \$825.00 rent owed; \$177.51 utilities owed; \$50.00 for completion of the garage door; and \$25.00 towards the filing fee paid by the landlord for this application.

I order the landlord may deduct from the security and pet damage deposits held in the amount of \$1,650.00 in satisfaction of this claim. I order the landlord to return the balance of the deposits in the amount of \$572.49 to the tenants.

I grant a monetary order to the tenants in the amount of **\$572.49**. This order must be served on the landlord 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: March 26, 2010.

Dispute Resolution Officer