

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent or utilities, for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act and to recover the cost of the filing fee. The landlord also seeks an Order to allow her to keep all of the security deposit.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*. One of the tenants was served in person on October 20, 2009 and one tenant was served by registered mail on October 30, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. This tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*. The original hearing was adjourned to allow the landlord to resend the evidence which was not received by the Dispute Resolution Officer in time for these hearing.

The landlord and her agent appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of the hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for money owed or damage or loss under the *Act*?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This tenancy started on May 01, 2007. This was a month to month tenancy and rent was \$1,200.00 per month due on the first of each month. The tenants paid a security deposit of \$600.00 on May 01, 2007. The landlord received the tenants forwarding address as the male tenants' place of business on September 30, 2009.

The landlord testifies that the tenants damaged or removed eight blinds in the property, these were replaced at a cost of \$275.99 and the landlord has provided receipts for this. The landlord testifies that the tenant's damaged the front door; the door jamb was also broken. The door was replaced at a cost of \$516.95 and a receipt has been provided. The landlord testifies the tenants broke the kitchen faucets and blocked the drains. The faucets were replaced at a cost of \$88.99 and the faucets and drains were fitted and unblocked at a labour only cost of \$73.50. The landlord testifies the porch railings were damaged. Some struts were missing and had to be replaced the landlord has not provided any receipts for this work but has provided a receipt for the screws used for the job at a cost of \$11.61.

The landlord testifies the tenants caused damage to the interior walls of the property. They found a large amount of holes in the walls which had to be filled, sanded and re-painted. The landlord estimates the paint cost to be \$500.00 but has not provided a receipt. The landlord has provided a receipt for the filler for the holes at a cost of \$73.01. The landlord testifies the tenants had caused damage to the screen door. This screen has not yet been replaced and no estimate has been provided for its replacement. The landlord testifies the tenants have damaged the linoleum on the kitchen floor and there are gouge marks which go through to the rubber backing. The landlord estimates this will cost \$700.00 to replace but has not provided a receipt or estimate for this work.

The landlord testifies the tenants left the rental unit unclean at the end of the tenancy. The oven and bathroom were left very dirty and the oven had to be cleaned four times. The landlord has provided invoices for this work and a total of 17 hours of cleaning took place at a cost of \$300.00. The landlord had to purchase cleaning supplies at a cost of \$82.91. The landlord testifies that the tenants did not clean the carpets at the end of the tenancy. The landlord states this cost to be \$100.00 but has not provided a receipt for this work. The landlord testifies the tenants were responsible for the yard work on the site but failed to do this. The landlord states

she incurred costs of \$85.00 including taking multiple loads to the dump. The landlord has not provided a receipt for this work. The landlord testifies the tenants broke three windows in the property however she has not provided a receipt for these to be replaced.

The landlord received a utility bill from the city for the tenants account. The landlord paid this bill of \$153.69 and has provided a copy of the bill.

The landlord testifies that she was unable to re-rent the property for two months due to the amount of repairs required and the time taken to get contractors to complete the work. The property was re-rented on December 01, 2009. The landlord seeks two months loss of revenue from the tenants to a sum of \$2,400.00.

The landlord requests an Order allowing her to keep the tenants security deposit and any accrued interest in partial satisfaction of her claim.

Analysis

Sections 23 and 35 of the Act say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant. A condition inspection report is intended to serve as some objective evidence of whether the tenants are responsible for damages to the rental unit during the tenancy or if they has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

The tenants did not appear at the hearing to dispute the landlords' testimony. The landlord has produced the move out condition inspection report and states that her former management company completed a move in condition inspection report which she has not been able to obtain. The landlords new agent took part in this hearing and testifies that she was the former tenant of the rental unit before these tenants took possession. This agent testifies that the unit

had been renovated at the start of her tenancy and was in good condition at the end of her tenancy when these tenants moved into the rental unit. In this instance I have applied a test for damage and loss claims as follows:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the tenants. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With regard to the landlords claim for damages to the rental unit and the sworn testimony of her agent I have considered the landlords claim for damages to the rental unit based on the testimony and evidence presented. I find the landlord has provided photographic evidence of the damage, the landlord has provided some invoices and receipts for some aspects of her claim as detailed above. Therefore, I find the landlord is entitled to recover the amount of **\$275.99** for the blinds; **\$516.95** for the front door; **\$88.99** and **\$73.50** for the taps and drain clearing; **\$11.61** for the screws to repair the porch; **\$300.00** for the cleaning and **\$82.91** for cleaning supplies; **\$153.69** for the unpaid utilities. A total claim of **\$1,503.64** is allowed at this time pursuant to section 67 of the *Act*.

I also find the landlord attempted to complete the repairs to the rental property in order to mitigate her loss of rental income; however, the majority of these repairs took two months to complete. I therefore find the landlord is entitled to recover two months loss of rental income to the sum of **\$2,400.00** pursuant to section 67 of the *Act*.

I find the landlord has provided insufficient evidence to support her claim for replacement of the linoleum in the kitchen, the screen door, the porch railings and posts, interior paint, carpet cleaning, yard work and glass replacement for three windows. As the landlord has not yet completed the repairs for some aspects of this claim and is unable to verify the actual amount these repairs will cost, I dismiss these sections with leave to reapply.

I Order the landlord pursuant to section 38(4)(b) of the Act to keep the tenants security deposit of \$600.00 and accrued interest of \$15.14 in partial satisfaction of her claim.

As the landlord has been partially successful with her application I find she is entitled to recover the **\$50.00** filing fee from the tenants. A Monetary Order has been issued for the following amount:

Repairs and cleaning to the rental property	\$1,503.64
Filing fee	\$50.00
Subtotal	\$3,953.64
Less security deposit and accrued interest	(-\$615.14)
Total amount due to the landlord	\$3,288.50

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,288.50**. The order must be served on the respondents and is enforceable through the Provincial Court 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: April 06, 2010.

Dispute Resolution Officer