

DECISION

Dispute Codes

MNR, MND, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order for unpaid rent and for damages to the rental unit. The landlord has also applied to recover the filing fee for this proceeding.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were hand delivered to the tenants on January 21, 2010. The tenant's agent confirmed they had received them.

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

Issues(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to a Monetary Order for damages to the rental unit?

Background and Evidence

This tenancy started on May 01, 2009. This was a fixed term tenancy for one year and rent was \$850.00 per month due on the first of each month. The tenants paid a security deposit of \$425.00 on April 15, 2009.

The landlord claims the tenants owe a balance of rent for November, 2009 of \$160.00. A 10 day notice was issued to the tenant for unpaid rent on December 31, 2009. This notice stated that the tenants had five days to pay the outstanding rent or dispute the notice. The tenants did not pay the outstanding rent or dispute the notice. The date given to end the tenancy on the 10 Day Notice was January 07, 2010.

The landlord testifies that the tenants caused significant damage to the rental unit. The carpets were badly stained and were beyond cleaning. The landlord replaced the two bedroom carpets with new carpeting at a cost of \$722.05. The landlord replaced the living room carpet with laminate flooring and the hall carpet with tile. The landlord states he also had to replace the linoleum in the kitchen with tile. The total cost for the laminate flooring including materials and labour was \$889.27. The total cost for tiling including materials and labour was \$1,482.15.

The landlord claims the tenants pulled up the base boards throughout the unit and these were left broken, the baseboards heaters were also broken. The landlord claims that at a party held at the unit the tenant used one of the baseboards as a pole dancing pole and has provided a photograph of this. The total cost to replace the baseboards and heaters, including materials and labour is \$364.02.

The landlord claims the tenants damaged light fixtures, light switches and electrical outlets in the unit to a replacement cost of \$253.71. The landlord claims the tenants damaged the kitchen counter tops. The counter tops had holes, chips and some water damage. The landlord replaced these with a cheaper version at a cost of \$579.60. The landlord claims the tenants had damaged the walls in the rental unit. There was a large hole in one of the drywalls and extensive nail, tack holes and scuff marks on the walls. The landlord claims the walls had to be patched, and painted at a total cost of \$1,048.33.

The landlord claims the tenants caused damage to some of the units plumbing. The landlord accepts that he would have normally fix any plumbing issues in the unit but claims that the tenants did not inform of the issues so he could take action at the time. The landlord claims a total cost of \$579.98 of these repairs. The landlord claims the tenants caused damage to the front door and frame. They had painted the window of the door black and damaged both the door and frame. It appears that the door was forced open from the damage to the lock and frame. The total cost for this repair is \$123.76.

The landlord claims the tenants did not remove their furniture, some personal belongings and garbage at the end of the tenancy. The landlord claims the tenants moved out around the January 01 or 2, 2010. The female tenant sent the landlord's manager a face book message stating she had moved her stuff out and the rest is the male tenants' responsibility. The landlord

claims that after the tenants had moved out he removed the remainder of their furniture, personal items and garbage at a total cost of \$189.08. The landlord accepts that the tenants should not have to pay the full amount for the repairs and replacement costs. The landlord states his total costs for labour was \$2,035.00 and he requests an amount from the tenants of \$555.00. The landlords' total cost for materials was \$6,508.09 and he requests the sum of \$4,555.67 from the tenants.

The landlord's witnesses both testify that the unit was in a fair condition at the start of the tenancy and the tenants had left the unit in a disgusting condition at the end of the tenancy. The female tenant told one of the landlord's witnesses by face book that she had had some people to the house at New Year and the male tenant had come and trashed the place, kicked the door in and put a hole in the wall. The message also contains information from the tenant which states that she is all moved out but the male tenant still has some stuff there. The landlord's second witness claims the carpets were left in a filthy disgusting condition and there was damage everywhere in the unit.

The tenants agent declined to cross exam the landlords witnesses.

The landlord states that he did complete a move in condition inspection report but did not complete a Move out condition inspection and he has failed to provide the move in inspection report for the hearing. The landlord has provided photographs showing some areas of damage and invoices for the repairs.

The tenant's agent disputes a large portion of the landlords' testimony. The agent agrees that there was one hole in the wall, and although the front door was all ready damaged this extra damage was the responsibility of the tenants. The agent testifies that there were cracks in the kitchen cupboards when the tenants moved in which became bigger through the tenancy.

The agent testifies that when the tenants moved in there were no baseboards in the rental unit. The male tenant had a professional painter to fix the holes and paint the interior of the house. The leaks in the kitchen sink were already there and despite the tenants e-mailing the landlord this leak was never repaired. The agent also testifies that the carpets were in a poor condition at the start of the tenancy and the landlord told the tenants that he would replace the carpets at the

end of their tenancy. The agent testifies that she had cleaned the carpets twice and there was one stain on the carpets.

The agent testifies that the female tenant had moved from the rental unit in July 2009 and went back in October to attempt reconciliation with the male tenant. The male tenant had a roommate who had moved in who also had a child and some of the items left belonged to him.

The agent testifies that the photograph the landlord has submitted concerning the female tenant using a baseboard for pole dancing was in fact the agents' daughter not the tenant and it was a door frame not a piece of baseboard shown in the photograph. The agent states that the holes and stains on the counter top were there at the start of the tenancy. No light fixtures had been broken during the tenancy and all light switches were removed prior to the tenants painting the unit and replaced after painting had finished.

The agent states that when the tenants got the eviction notice they moved out on January 01 and 02, 2010 and the male tenant planned to go back to the unit to clean up and remove his belongings and garbage with the help of the agent and the tenants families. However, the landlord had already gone in and removed all the tenants' belongings without informing the tenant or giving him opportunity to remove his stuff. The agent states that they obtained an estimate to replace the front door at a cost of \$20.00 (not provided).

The landlord states that he helped the male tenant remove some of his belongings and the landlord claims the tenant told him that as long as he got his television and couch he was done. The landlord claims the tenants' mother also told the landlord that they had no more time to help him move out. The landlord states that the male tenant told him he had painted the house but it was not done. The landlord states that the female tenant told him she was not having a party when clearly she did have one at the rental unit.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. Based on the inconsistency between the tenant's evidence and the evidence of the landlord and his witnesses I have applied a test for damage or loss claims:

- 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.

The landlord has not provided a Move in or Move out condition inspection report. 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 tenants (within 7 to 15 days). 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 have 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.

In this instance the tenants dispute the landlord's evidence that they caused all the damage to the rental unit. The tenants agree that they are responsible for the damage to the front door and frame and one hole made in the dry wall. The tenant's agent argues that the remainder of the damage the landlord alleges the tenants caused was there at the start of the tenancy and in the case of the damage to the baseboards there were no baseboards in the rental unit. I find although the landlord has provided some photographic evidence of some areas of damage,

there is insufficient evidence to support all of the landlord's claims that the damages were caused by the actions or neglect of the tenants. The landlord has provided sufficient evidence to support his claim that the carpets had to be replaced due to the filthy conditions they were left in at the end of the tenancy. The landlord was unable to give details about how old the carpets were. As both the landlord and his witnesses all state that the carpets were only in a fair condition at the start of the tenancy I have reduced the landlords claim by 30%. Therefore, I find the landlord is entitled to recover the amount of **\$505.40** for the two bedroom carpets and **\$622.48** for the laminate flooring. The landlord has provided no evidence to support his claim that the linoleum in the kitchen had to be replaced or the carpet in the hall. As the landlord replaced this with tile instead of linoleum, laminate or carpet he has not shown how he mitigated the loss in these areas.

I further find the landlord has established his claim for a replacement door and frame to the sum of **\$123.76** and for repairs to a section of the dry wall at a reduced amount of **\$100.00** pursuant to section 67 of the *Act*. The landlord has provided no evidence of the damage to the counter tops, baseboards, heaters, light fixtures, electrical switches and outlets, the plumbing or the walls. Consequently, the remainder of the landlords claim for damage to the rental unit is dismissed without leave to reapply.

The tenants agent argues that the male tenant was not given time to move his furniture and belongings from the rental unit before the landlord went in and removed all items. However, the agent stated that one tenant had moved out in July, 2009 and the other tenant moved out on January 01 or 02, 2010. The agent argues that the 10 Day Notice given by the landlord states that the tenants had until January 07, 2010 to vacate the rental unit. The agent states that they intended to return to the unit to remove the tenant's belongings and clean the unit after the date the tenant moved out. I find however that the tenant did vacate the rental unit on or about January 01, 2010 and therefore abandoned the remainder of his belongings at the end of the tenancy. As such the landlord is at liberty to remove these belongs and if they have a value of less than \$500.00 the landlord is entitled to dispose of them and charge the tenants for this. Consequently, I find the landlord has established his claim for the removal and dumping of the tenant's belongings and garbage to a sum of **\$189.08** pursuant to section 67 of the *Act*.

I find that there is no dispute of the fact that the tenants owe arrears for the balance of rent for November, 2009. Payment of the rent within five days of receiving the Notice would have

served to automatically cancel the Notice. In this instance the debt was not paid within five days and the tenant's choose to move from the rental unit on or about January 01, 2010.

Consequently, I find the landlord is entitled to a monetary award to recover the unpaid rent of **\$160.00** pursuant to section 67 of the *Act*.

As the landlord has been partial successful with his claim I find he is entitled to recover the cost of **\$50.00** for filing his application pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the following amount:

Balance of unpaid rent for November, 2009	\$160.00
Laminate flooring	\$622.48
Repairs to door and frame	\$123.76
Repairs to hole in dry wall	\$100.00
Removal of garbage, belongings and furniture	\$189.08
Filing fee	\$50.00
Total amount due to the landlords	\$1,750.72

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 **\$1,750.72**. 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 13, 2010.

Dispute Resolution Officer