

DECISION

Dispute Codes

For the tenants MNDC, MNSD, FF

For the landlord – MNR, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were heard together. The tenants seek a Monetary Order for money owed or compensation for damage or loss under the Act, for the return of double their security deposit and to recover the filing fee paid for their application. The landlord seeks a Monetary Order for unpaid rent, to keep the security deposit and to recover the filing fee paid for his application.

Both Parties served the other Party with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

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

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to double the security deposit back?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This month to month tenancy started on January 01, 2010 with a verbal agreement between both parties. The tenants moved into the rental house on January 15, 2010 when they came to live in the area from overseas. The tenants agreed to pay a monthly rent of \$1,500.00 and they paid a security deposit of \$750.00.

The tenant's application

The tenants testify that they saw the house for rent on an internet site and contacted the landlord while they were still living overseas. The tenants testify the house was advertised as being in excellent condition. They agreed to rent the property but could not view it in person as they were still living overseas and had to take the landlords word for the properties condition. They transferred the \$750.00 security deposit on December 11, 2009 and \$1, 500.00 for the first month's rent on December 30, 2009 to the landlord.

The tenant's testify that they arrived in the country and moved into the house. The landlord was not available as he was on holiday but he had arranged for his father- in law to show them around the house. The tenant's testify that they were horrified at the condition of the house. It was not in an excellent condition as advertised and was dirty, unsanitary and unsafe. The tenants claim the bathrooms and kitchen were filthy and they spent many hours cleaning the urine stains and lime scale in the bathroom and cleaning the kitchen cupboards. The carpets had been cleaned but smelt badly of dog, there were broken light fixtures and exposed wiring on the furnace and in a panel in a bedroom and exposed pipe work in a bedroom wall and the fridges were dirty. The tenants would have liked to have moved out that same evening but as they had pets they could not go to a hotel.

The tenants claim they attempted to contact the landlord but could not reach him. They explained to the landlords' father-in law about the conditions in the house and how upset they were that the house was misrepresented to them in the advert and by the landlord. They claim they took the landlord at his word that the house was in excellent condition because he knew they were moving from overseas with their daughter and pets. The tenants testify that they stayed in the house for eight days and cleaned the house, replaced the toilet seat and shower head so they could be used during their stay. The tenants claim this was rented as a four bedroom house and did not state that any area of the basement was unfinished as the landlord claims.

The tenants claim the landlord was aware of the day they were moving into the house as they had sent him an e-mail with their dates. He was not available to meet them or to conduct a move in condition inspection with them.

The tenants seek the return of rent for January less the eight days rent that they lived in the house. The tenants also seek double their security deposit as they gave the landlord their forwarding address in writing on February 14, 2010 and the landlord did not return their deposit within 15 days. The tenants also seek to recover their filing fee.

The landlord disputes the tenant's testimony. The landlord testifies that the house was old but was in good condition. The landlord claims he spent \$600.00 having the house cleaned before renting it. The landlord states that the brown stains in the toilet are from water sitting in the toilet while it was not used. The landlord has provided a receipt for cleaning costs. The landlord claims the house was not unclean to such an extent that it was not acceptable to live in. The landlord states that he did not misrepresent the house and some of the tenants photographs show an un-finished area of the basement and are not a reflection of the entire house. The landlord also claims that the wiring was not unsafe and a simple cover over the wires would have solved the problem.

The landlords' application

The landlord testifies that the tenants told him they wanted to rent the house for a few months while they found a house to purchase. The landlord testifies that he agreed to rent them the house from January 01, 2010. The landlord claims the tenants informed him of some problems with the house when he spoke to them by phone while he was on holiday and he asked them to wait for a few days until he got back. The landlord also states that his father-in-law told him the tenants had some issues and that the cleaners had missed a couple of spots. When the landlord returned the house was empty and the tenants had moved out. The landlord claims the tenants did not return the keys so he could re-rent the house.

The landlord testifies that sometime around the middle of March, 2010 he found a letter from the tenants in his mail box with their forwarding address and the keys. He claims this was a mail box he did not use. The landlord seeks to recover rent for February, 2010 as the tenants left

without giving notice to end the tenancy and the house could not be re-rented until March 01, 2010.

The landlord seeks to keep the security deposit in partial satisfaction of the rent owed and to recover the filing fee.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; In dealing with the tenants claim for double the security deposit I refer both Parties to Section 38(1) of the *Act* which says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

I find that the landlords claim that he did not receive the tenants forwarding address until the middle of March has no merit. The tenants posted a letter with their forwarding address and the keys to the house in the landlords' mailbox. The tenants would not have known that this was a mailbox that the landlord seldom used. Therefore, I find the landlord did receive the tenants forwarding address in writing by February 17, 2010 (three days after mailing pursuant to section 90(d) of the *Act*). As a result, the landlord had until March 04, 2010 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the tenants security deposit and did not file an application to keep it until March 16, 2010; consequently, pursuant to section 38(6)(b) of the *Act*, the landlord must pay the tenants double the amount of their security deposit to the sum of **\$1,500.00** pursuant to section 67 of the *Act*.

In dealing with the tenants claim for the return of a portion of rent for January, 2010; I find the landlord misrepresented the house when he advertised it on the internet. In this advertisement (provided in evidence) the landlord has stated that the condition of the house is excellent. By the tenants photographic evidence presented these show clearly that the house was not in an excellent condition.

Section 32(1) of the *Act* states:

A landlord must provide and maintain residential property in a state of decoration and repair that a) complies with the health, safety and housing standards required by law, and b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Consequently I find the landlord is in breach of section 32 of the *Act* and did not ensure the house was suitable for occupation by the tenants or ensure that the house was clean, sanitary and safe before their occupation of the property. I accept that the landlord had paid to have the house cleaned but this was not done to an acceptable standard resulting in areas in the bathroom, kitchen and fridges left dirty and unsanitary. Due to this I find the tenants are at liberty to end the tenancy. I also find the tenants are entitled to a Monetary Order to recover a portion of rent for January, 2010. The tenants are willing to pay for the eight days they lived in the house, therefore I find they are entitled to recover the sum of **\$1,112.74** (\$48.38 per day for 23 days).

As the tenants have been successful with their claim I find they are also entitled to recover the **\$50.00** filing fee from the landlord pursuant to section 72(1) of the *Act*.

With regards to the landlords' application to recover rent for February, 2010, as I have found in favor of the tenants ending the tenancy in January, 2010, I find the landlord is not entitled to a Monetary Order for unpaid rent for February, 2010 and this section of his claim is dismissed.

With regards to the landlords application to keep the tenants security deposit; As I have found in favor of the tenants application to recover double the security deposit, this section of the landlords application is dismissed.

As the landlord has been unsuccessful with his application I find he must bear the cost of filing his own application.

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$2,662.74**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

The landlords' application is dismissed in its entirety 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: April 23, 2010.

Dispute Resolution Officer