

DECISION

Dispute Codes MNDC MNSD MNR MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the pet and/or security deposit, for unpaid rent or utilities, for damage to the unit, site or property, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to the Tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on December 9, 2009. Mail receipt numbers were provided in the Landlord's Agent's testimony. The Tenants are deemed to be served the hearing documents on December 14, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord and his Agent appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one on behalf of the Tenants appeared despite being served with notice of today's hearing in accordance with the *Act*.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on March 1, 2008, and ended when the Tenants returned the keys to the unit on December 1, 2009. Rent was payable on the first of

each month in the amount of \$1,200.00 and the Tenants paid a security deposit of \$600.00 on February 8, 2008.

The rental unit was one of four units located in a fourplex which was built in 1975 and owned by the Landlord from the beginning.

The Landlord provided documentary evidence which consisted of, among other things, photos of the unit at the onset of the tenancy taken February 2, 2008, photos of the unit taken December 3, 2009, a copy of the Tenants' notice to end tenancy dated November 12, 2009 to be effective December 1, 2009, an unclaimed envelope sent to the Tenants via registered mail, and a letter from a neighbouring tenant confirming the condition of the rental unit at the onset of the tenancy.

The Agent testified the Tenants had pet rabbits and pet mice and that they house these animals in fenced off pens inside the rental unit. The Agent argued the pets were not kept in cages and their fenced off pens did not have a bottom or anything placed on top of the carpets or flooring so the animals were allowed to roam free within the fenced areas leaving urine and feces on the carpet and flooring. The Agent advised there was even straw or hay brought in and placed directly on the carpet and flooring for the animals.

The Agent referred to his photographic evidence in support of the damage to the walls and baseboards whereby the Tenants attempted to patch some of the holes and left others unattended. The Agent argued that the Tenants left a large amount of debris behind which had to be removed. The Agent stated that it took him approximately 56 hours to clean the rental unit, it took two trips to the landfill, plus an additional 40 hours to mud, sand, and paint the rental unit which had been completely painted just prior to the start of the tenancy.

The Agent confirmed that after dealing with the issues of this tenancy and the Landlord's health they made the decision to sell the fourplex. The rental building was listed for sale in mid December, 2009, an offer was accepted on January 25, 2010 and the sale was completed on February 11, 2010.

The Agent stated they are seeking one month of lost rent for December 2009, and to keep the security deposit of \$600.00 for a total monetary claim of \$1,800.00.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the Tenants ended the tenancy in contravention of section 45 of the Act which provides that a tenant may end a periodic tenancy by providing the

landlord with written notice to end that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable. In this case the Tenants provided notice to end the tenancy on November 12, 2009, and in accordance with the Act, the tenancy would not end until December 31, 2009, therefore the Tenants are responsible for December 2009 rent. Based on the aforementioned I find the Landlord has proven the test for damage or loss, as listed above, and I approve his claim for loss of December 2009 rent of \$1,200.00.

The difference in the condition of the rental unit from the onset of the tenancy to the end of the tenancy was supported by the Landlord's evidence and testimony. On a balance of probabilities, I find that in considering the evidence before me, it would be reasonable to conclude that it took the Agent over 96 hours to clean and repair the rental unit at the end of the tenancy. Based on the aforementioned I hereby approve the Landlord's claim of \$600.00 (96 hours x \$6.25 per hour) for labour costs to repair the unit

Monetary Order – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit, and that the Landlord is entitled to recover the filing fee from the Tenants as follows:

Loss of Rent for December 2009	\$1,200.00
Labour to clean and repair the rental unit	600.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,850.00
Less Security Deposit of \$600.00 plus interest of \$8.07 from February 8, 2008 to April 26, 2010	- 608.07
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,241.93

Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,241.93**. The order must be served on the respondent and is enforceable through the Provincial Court 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: April 26, 2010.

Dispute Resolution Officer