

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, 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 landlord's agent and the tenants.

During the hearing the landlord's agent questioned acceptance of the tenant's evidence that was received by the Residential Tenancy Branch on April 21, 2010. While the expectation is that evidence is provided with 5 clear business days prior to the hearing, excluding the date received and the hearing date, I find the landlord was not prejudiced by receiving this evidence with 4 clear business days prior the hearing and accept the tenant'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 and late charges; 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 the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on April 11, 2008 for a month to month tenancy beginning on May 1, 2008 for a monthly rent of \$1,100.00 due on the 1<sup>st</sup> of the month, with a security deposit of \$550.00 paid on April 11, 2008;
- A copy of the tenant's "Notice to Vacate" signed by the tenants giving November 30, 2009 as the effective date – this date has been crossed out and changed to December 31 and initialled by the tenant. The notice provides the tenant's forwarding address and is signed by the landlord's agent as received on November 17, 2009;
- A copy of the Condition Inspection Report for both move in and move out inspections, showing the tenant has agreed to the landlord's retention of \$157.50 for carpet cleaning;
- Newspaper advertisements dating from November 20, 2009 to December 4, 2009 from two local papers showing the landlord has large 2 or 3 bedroom units available;

- A copy of notification from the landlord's bank showing a stop payment had been made on the tenant's rent cheque;
- A summary of events; and
- A copy of the first page of a new tenancy agreement showing the rental unit was rented out effective March 1, 2010.

The tenants submitted the following documents:

- A summary of the dispute and their response to the dispute;
- A copy of the tenant's "Notice to Vacate" signed by the tenants giving November 30, 2009 as the effective date – this date has been crossed out and changed to December 31 and initialled by the tenant. The notice provides the tenant's forwarding address and is signed by the landlord's agent as received on November 17, 2009;
- A copy of the tenant's account showing rental payments throughout the tenancy;
- A copy of a letter dated December 16, 2009 from the landlord with a copy of a "Security Deposit Statement", requesting payment from the tenants in the amount of \$751.53;
- A copy of the tenant's response to the landlord dated December 23, 2009; and
- Copies of printouts from Craigslist, Kijiji, and homeTrader showing no advertisements for this rental property.

The landlord's agent testified that the tenant's had provided on November 17, 2009 a notice to vacate effective November 30, 2009. The agent further stated that she indicated that she advised one of the tenants that that was "short notice", that the effective date would need to be December 31, 2009 and the tenants would be responsible for December rent.

Both parties agreed that agent would try to rent the rental unit out for the month of December and the tenants moved out of the rental unit on November 27, 2009. A condition inspection was completed and the tenants agreed to retention of an amount for cleaning the carpets.

In their written submission the tenants are asking for 3 days of prorated rent for November 28 to 30, 2009; return of their security deposit in full, including the previously agreed to carpet cleaning deduction; the stop payment fee; UPS courier charges; and a satisfactory reference letter.

The landlord testified that she accessed her wait list of potential renters and found no one interested in taking the rental unit at the time and that she used an ongoing advertisement in the local papers and an online advertisement.

The tenants testified that they felt the landlord did not do everything she could to mitigate any lost rent. They stated that had they known that the landlord was not going to find a tenant to move into the rental unit they would have stayed until the end of December 2009.

In their written submission, the tenants note the agent felt there would be no problem re-renting this unit for December 2009; that she would make every attempt to lease the apartment; and that she told one of the tenants that there are no guarantees and she would put on her thinking cap and actively search for prospective tenants for the unit.

### Analysis

In the case of verbal agreements, I find that where verbal terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

Section 45 of the *Act* stipulates that a tenant wanting to end a month to month tenancy may do so 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 notice. As the tenants provided the landlord with their notice on November 17, 2009 the earliest effective date to end the tenancy would have been December 31, 2009, as such I find the tenants are responsible for rent for the month of December 2009.

Section 7 of the *Act* requires a landlord who claims compensation for damage or loss that results from the tenant's non-compliance with the *Act*, must do whatever is reasonable to minimize the damage or loss. In a case such as this it means the landlord must take mitigate the lost revenue by taking reasonable steps to re rent the rental unit.

Despite the landlord's submission that she had a waitlist and an ongoing advertisement in two local papers, I am persuaded by the tenant's argument that the landlord didn't do anything specific to mitigate their loss.

As the landlord has not submitted confirmation or evidence that she had taken steps in addition to their normal advertisements specific to renting this particular unit I find that the landlord has failed to comply fully with Section 7. As such, I find the landlord is responsible for ½ of the rent for the month of December 2009.

In relation to the landlord's claim to late charges and the returned cheque charges, I find that by the tenant's act of placing a stop payment on the December 2009 rent cheque they are responsible to pay the landlord \$25.00 for either a late payment administrative charge or a returned cheque administrative but not both. To apply both, I find, would constitute a penalty versus an administrative charge. As such, I find the tenant's must pay the landlord \$25.00.

As the landlord's claim to \$157.50 for carpet cleaning, Section 38 (4) allows a landlord to retain an amount from a security deposit of at the end of the tenancy the tenant agrees in writing the landlord may retain the amount. As the tenants had agreed, in

writing, to this deduction at the time of the move out condition inspection, I find the landlord is entitled to retain this amount.

In relation to the tenant's requests in their written submission regarding prorated rent; stop payment and courier fees and any other issues, I find these issues to be out of the scope of the landlord's Application for Dispute Resolution but note that the tenant's are at liberty to file their own Application to deal with these matters.

### Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$782.50** comprised of \$575.00 rent and late charges owed; \$157.50 carpet cleaning and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$555.97 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$226.53**. This order must be served on the tenants 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: April 28, 2010.

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Dispute Resolution Officer