

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, SS

Introduction

This matter dealt with an application by the landlord for an a Monetary Order for unpaid rent, for damages to the rental unit, for money owed or compensation for loss or damage under the Act, regulation or tenancy agreement and to recover the filing fee for this proceeding. The landlord also applied to keep all or part of the security deposit. At the outset of the hearing the landlord confirmed that the tenants were served with notice of this hearing and they abandon their application for an Order for substitute service.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were hand delivered to the tenant by a process server on February 08, 2010. The tenants 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. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

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?
- Is the landlord entitled to a Monetary Order for money owed or compensation under the Act?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both Parties agree that this tenancy started on June 27, 2008 and ended on January 09, 2010. This started as a fixed term tenancy for one year and reverted to a month to month tenancy at

the end of the fixed term. The tenants paid a security deposit of \$700.00 on January 18, 2008. The rent for this unit started at \$1,400.00.

The landlord attending testifies that the tenants rent cheque for March, 2009 bounced and he could not contact the tenants throughout the month of March, 2009. The tenants paid rent for April, 2009 and this amount was applied to the outstanding rent for March, 2009. The landlords spoke to the tenants who told him that the male tenant had been out of work so the landlords decided they would reduce the rent to \$1,200.00 in May, 2009 to help the tenants out. The landlord claims the tenants told him they would continue to pay the \$1,400.00 to try to make up the rent arrears for March and they paid this amount by cheque in May, 2009. This was applied to the outstanding rent for April, 2009. The landlord testifies that the tenants rent cheque did not clear in June, 2009. The tenants gave the landlord another cheque for \$1,200.00 which he applied to rent for May, 2009.

The tenants continued to pay rent each month of \$1,200.00 until December, 2009 and each month the rent was applied for the previous month to cover the arrears. The landlord states that the tenants did not pay rent in January, 2010 which meant that the tenants were now in arrears for December, 2009 and January, 2010. The tenants moved from the rental unit on January 09, 2010 and did not give the landlord notice to end the tenancy. The landlord seeks to recover rent from February 01 to 14, 2010 as the unit was re-rented on February 15, 2010. The landlord seeks a monetary amount of \$3,000.00 in unpaid rent.

The landlord testifies that a move in condition inspection was completed with the tenants (copy provided). After the tenants had vacated the rental unit the landlord completed another inspection at the end of the tenancy (no copy provided) the landlord claims the tenants had left an enormous amount of garbage both inside and outside the rental unit (photographs provided). The landlord paid some neighbourhood children to help him and his wife clear this garbage. It took four people 40 hours to clear the garbage at a cost of \$15.00 per hour to a sum of \$2,400.00. The landlord also incurred dump fees of \$200.00 and had to make four trips to the dump at a 70km round trip to a cost of \$145.60.

The landlord testifies that the tenant's dog had caused some damage to a door in the unit by scratching the door. The landlord claims \$200.00 to replace this door. The landlord claims another door in the basement had been ripped from its hinges and this had to be replaced at a

cost of \$200.00. The landlord claims the tenant's cat caused scratches to a banister railing and this was repaired at a cost of \$50.00. The landlord also claims the carpet in the basement was soaked with what he believes to be pet urine and the carpet and pad had to be replaced at a cost of \$600.00. The landlord has not provided receipts or invoices for this damage. The landlord has provided photographic evidence of the banister railing.

The landlord also seeks replacement costs for a gas weed eater that was missing from the unit at a cost of \$200.00; a wooden cabinet was also missing and the landlord seeks the sum of \$150.00; a water filter wrench was missing and the landlord seeks the replacement cost of \$10.00. The landlord testifies that when the tenants moved into the unit the oil tank was nearly full and the landlord estimates that there was 700 litres of oil in the tank. The tenants did not replace this oil or reimburse the landlord for this cost. The landlord seeks the amount of \$650.00 for the oil used by the tenants.

The tenants testify that they had to end the tenancy as the property was unsafe, the electricity was not up to code and they had no hot water. The tenant claims that the landlord told them that the hot water tank was his responsibility because they had broken it. The tenant testifies that they only let the oil run dry on two occasions and did not damage the tank. The tenant testifies that they informed the landlord of their concerns with these and other issues in the property but the landlord did not make any repairs. The tenant's testify that because of these issues they ended the tenancy and therefore should not have to pay rent for January or February, 2010. The tenant claims that they only owe the landlords \$700.00 in unpaid rent as \$400.00 was paid from the arrears for March, 2009 as the landlord told them he would reduce their rent to \$1,200.00 from March, 2009 not May, 2009 as the landlord suggests.

The tenants do not dispute that they left garbage behind at the property when they moved out. The tenant testifies that he spoke to the landlord on the day they moved out who told him that he was not welcome back and would be charged with trespass if he came back to the property.

The tenant claims that he did have a dog but his dog never scratched or damaged the doors and he claims they did not have a cat. The tenant claims they did not tear a door from its hinges. The tenant also claims that his dog did not urinate on the basement carpet and suggests the carpet was ruined when the septic tank backed on three separate occasions and flooded the basement. The tenant disputes the landlord's testimony that there was 700 litres of oil in the tank when they moved into the property. The tenant claims there was only

approximately 100 litres and he did not replace this as the landlord told him the tank was going to be replaced with an electric hot water heater. The tenant testifies that they were without water to the house as the landlord would not fix the pump in the basement which brought water to the house.

The tenant testifies that he has no knowledge of a weed eater at the property and did not take the wrench. The tenant does state that his movers did take the cabinet which he will return to the landlord.

The landlord testifies that the house required some updates which they were willing to do for a certain type of tenant. The landlord testifies that the electrical system in the house was up to code and passed a test in 2006. The landlord claims the house was rented in the condition it was in and was suitable for occupancy by tenants in accordance with the Act. The tenants signed the report at the start of the tenancy to agree to the condition of the property. The landlord claims the tenants damaged the hot water tank because they ran highway diesel through the system that clogged the filters. They also allowed the tank to run dry because they only topped it up with small amounts of oil. The tenants were told to get advice from an oil heating company or they would be responsible for the repairs. The landlord also states that he advised the tenants that if they wanted to leave they must give him the required notice.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords claim for unpaid rent; section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The tenants argue that the landlords made the rent reduction for March, 2009 and the landlord argues that the rent reduction was for May, 2009. As the tenants paid rent of \$1,400.00 for April, 2009 I find I prefer the evidence of the landlord that the agreement was to reduce the rent from May 01, 2009 to \$1,200.00.

The tenants argue that the landlord is in breach of the *Act* by not maintaining and repairing the property to make it suitable for occupation by tenants and that is why they moved from the rental unit. When a tenant makes a claim such as this the burden of prove falls on the tenant to prove that the rental unit was unsuitable for occupation. I find the tenants have not provided sufficient evidence to prove their claim.

The landlord seeks unpaid rent for December, 2009 of \$1,200.00 and for January, 2010 of \$1,200.00. The landlord also seeks unpaid rent for February 01 to 14, 2010 of \$600.00 because the tenants moved out without giving notice to end the tenancy. As the tenants have been unable to substantiate their claim that the landlord was in breach of the *Act*, regulations or tenancy agreement I find the landlord has established his claim for unpaid rent for these months. Consequently, the landlord is entitled to a Monetary Order for unpaid rent to the sum of **\$3,000.00** pursuant to s.67 of the *Act*.

With regards to the landlords claim for the costs incurred in removing the garbage from the property, I find the landlord has provided sufficient evidence to show the large amount of garbage left at the property. The tenant argues that the landlord would not allow him access to the property to remove this garbage himself after the tenancy ended however, the tenants should have removed this garbage when they vacated the rental unit and should not expect the landlord to allow them more time to return to the property. I find the amount of garbage left behind to be excessive and therefore find the landlord is entitled to his costs in removing the garbage of **\$2,400.00**. I further find the dump fees of **\$200.00** to be reasonable considering the amount of garbage and I find the amount of trips to the dump to also be reasonable. I therefore award the landlord the costs incurred for these trips to an amount of **\$145.60**.

With regards to the landlords claim for damage to the rental unit; I have applied a test for damage and loss claims.

- Proof that the damage or loss exists
- Proof that this damage of 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 landlord 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 tenant. Once that has been established, the landlord 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.

I find that the landlords claim for damages does not meet all of the components of the above test. The landlords have not submitted any evidence to support their claim of \$1,050.00 for damage. The landlord has not provided sufficient evidence to show the alleged damage to the doors, or carpet or any evidence to support their claim that the tenant had a cat. Consequently this section of the landlords claim is dismissed without leave to reapply.

With regard to the landlords claim for missing belongings and oil; the landlord has provided no evidence to support their claim to show that a weed eater was left at the property at the start of the tenancy or that the tenants removed the water filter wrench. The tenants do admit that the landlord's cabinet was removed from the property when they moved and they have agreed to return this to the landlords. An Order has been issued for the tenants to return this cabinet. Consequently this section of the landlord's monetary claim is dismissed without leave to reapply

The landlords have not provided any evidence to substantiate their claim that the oil tank had 700 liters of oil at the start of the tenancy. While I accept that there was oil in the tank which the tenants must pay for, the burden of prove as to how much oil was in the tank falls on the landlords. As the landlords have not met the burden of proof in this matter, I find I can only award 50% of his claim of \$650.00 to a sum of **\$325.00** pursuant to s.67 of the *Act*.

It is my decision that the landlords are entitled to keep the security deposit of \$700.00 plus accrued interest of \$5.65 against the outstanding rent owed by the tenants.

As the landlords have been largely successful with their claim I find there are entitled to recover the **\$50.00** filing fee paid for this application from the tenants pursuant to s.72(1) of the *Act*. A Monetary Order has been issued to the landlords pursuant to s.67 and 7291) of the Act as follows:

Unpaid rent for December, 2009, January, 2010 and half February, 2010	\$3,000.00
Dump fees	\$200.00
Millage for trips to the dump	\$145.60
Costs for oil used by tenants	\$325.00
Filing fee	\$50.00
Subtotal	\$6,120.60
Less security deposit and accrued interest	(-\$705.65)
Total amount due to the landlords	\$5,414.95

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 **\$5,414.95**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the tenants to return the cabinet taken from the rental property to the landlords by May 31, 2010.

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: May 13, 2010.

Dispute Resolution Officer