DECISION

Dispute Codes

For the tenant – MNDC, MNSD, FF

For the landlord – MND, MNSD, MNDC, 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, to recover double their security deposit and pet damage deposit. The tenants have asked to amend their application to include the recovery of their filing fee. This amendment has been allowed. The landlord seeks a Monetary Order for damage to the unit, site or property and an Order for money owed or compensation for damage or loss under the Act. The landlord also seeks to keep the security deposit and pet damage deposit and recover the filing fee.

The tenants served the landlord in person on February 26, 2010 with a copy of the application and a Notice of the Hearing. The landlord served the tenant by registered mail on March 01, 2009 with a copy of the Application and Notice of Hearing. The landlord states that she was aware she had three days from filing her application to serve the tenant however she states the property was in the hands of the receiver who stated he would settle the matter with the tenants. The landlord stated that the receiver failed to do this so she then served the tenant with notice of this hearing. I accept the tenants have been served and will allow the time lapse between filing her application and service of the hearing documents. Therefore, 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 under the Act?
- Are the tenants entitled to recover double their security and pet damage deposits?
- Is the landlord entitled to a Monetary Order for damages to the unit, site or property?
- Is the landlord entitled to a Monetary Order for Money owed or compensation for damage or loss under the Act?
- Is the landlord entitled to keep the security and pet damage deposits?

Background and Evidence

Both Parties agree that this month to month tenancy started on February 01, 2009 and ended on January 15, 2010. The rent for this unit was $2,000.00 per month and was due on the first of each month. The tenants paid a security deposit of $1,000.00 and a pet damage deposit of $500.00 on January 24, 2009. The tenants gave the landlord their forwarding address in writing on January 27, 2010.

The landlord testifies that towards the end of the tenancy the property went into the hands of the receiver. She states that she was still responsible to carry out a move out condition inspection which was completed on January 15, 2010 with the tenants. The landlord claims the tenants would not sign the inspection report. The landlord claims the report shows damage to the rental unit. She claims the tenants did not clean the carpets. She claims the tenants had two large dogs that caused damage to the landscaping and left excrement in the yard. The landlord claims the tenants damaged the washer and dryer and these had to be replaced. The landlord claims one of the tenants used the sunroom as a workshop and caused damage to a window by putting a vent through the window. The landlord has not provided the Move in or Move out condition inspection reports.

The landlord claims the receiver was in control of the property and he paid for repairs to be carried out from the rent money. The landlord seeks $150.00 for cleaning expenses, $175.00 for repairs to the landscaping and cleaning up after the dogs, $1,447.00 for the cost of replacing the washer and dryer and $25.00 for repairs to the window. The landlord has not provided invoices for this work.

The landlord states the tenants had sole use of the laundry facilities except for a period of three months when an upstairs tenant also used them.

The landlord states that she was seeking an additional $2,000.00 because at the time of filing her application she thought the tenants had not given notice to end the tenancy. However she now knows that an agreement to end tenancy was reached between the receiver and the tenants and therefore the landlord withdraws this section of her application.

The landlord testifies that the tenants have already received their security deposit back from the receiver. She claims the tenants did not care for the property and when the receiver was attempting to sell the property it was in such bad condition that he needed vacant possession in order to sell it. The landlord claims that on the agreement to end the tenancy between the tenants and the receiver it states that the receiver will reimburse the tenants with $1,500.00.

The tenants dispute the landlords' testimony. They claim they did not cause damage to the rental unit, appliances or landscaping. The tenants claim the washer and dryer were used by themselves and four tenants living in the upstairs unit not one tenant as claimed by the landlord. The tenants claim both appliances worked perfectly at the end of the tenancy.

The tenants claim that they attended the move out condition inspection with the landlord but did not agree with her comments on the inspection report and refused to sign it at that time. They later attempted to contact the landlord to sign the inspection report but she did not return their calls and did not provided them with a copy of the inspection report.

The tenants claim that they had a mutual agreement to end tenancy with the receiver. The tenants claim they paid $1,000.00 in rent for January 1st to 15th, 2010. They claim the receiver told them that if they left the house in good condition on the January 15, 2010 he would give them $500.00 towards their moving expenses and would return the $1,000.00 in rent. The tenant's claim this money was separate from their security deposit and was money agreed upon from the receiver due to them having to vacate on short notice.

The tenants call the receiver for the property as a witness. The witness states that the $1,500.00 paid to the tenants was not the return of their security deposit as that was held for them by the landlord. The money paid was compensation for their pain and suffering in having

to move out at short notice. It was paid from the receivership money and was a separate issue. This witness states he did not pay for any repairs or cleaning in the home and paid a sum of money for new plants and lawn cutting.

The tenants testify that during the tenancy they had a problem with mould in the bathroom. They had an agreement with the landlord that she would provide the paint and supplies and the tenants would paint the bathroom and be reimbursed for their labour costs. The tenants claim the landlord did not reimburse them this cost of $100.00 and they sent her an invoice for this work which remains unpaid. The tenants seek to recover this cost and seek the return of double their security deposit to the sum of $3,000.00.

The tenant presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness; with regard to the landlords claim for damage or loss; I have applied a test used in this type of claim. As the burden of proof lies on the claimant I find the landlord must provide evidence of the following things:

- 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 has not been met. The landlord has provided no evidence 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. The landlord has provided no evidence that can verify the actual monetary amount of the loss or damage and no evidence to

show that she did everything possible to address the situation and to mitigate the damage or losses that were incurred. Consequently I dismiss the landlords' application for damage to the rental unit, site or property and for money owed or compensation for damage or loss under the Act.

The landlord has applied to keep the tenants security deposit; however, as she has been unable to provide any evidence to support her reasons for keeping it, this section of her claim is also dismissed.

With regard to the tenants claim for double the security deposit; section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding 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 landlord did receive the tenants forwarding address in writing on January 27, 2010. As a result, the landlord had until February 11, 2010 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. The landlord made an application to keep the security deposit on February 10, 2010 just within the 15 days allowed under the *Act.* As such I find the tenants are not entitled to recover double their security and pet damage deposits but are entitled to the return of the security and pet damage deposits to a sum of **$1,500.00**.

I further find the landlord agrees that the tenants did carry out work to paint the bathroom of the property and she did agree to pay for their labor costs. I accept the landlord has only recently received an invoice from the tenants for this work and could not reimburse them earlier. Therefore, I find the tenants are entitled to recover **$100.00** from the landlord for painting the bathroom.

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

As the tenants have been partially successful with their application I find they are entitled to recover the **$50.00** filing fee from the landlord pursuant to section 72(1) of the Act. A Monetary Order has been issued for the following amount:

Security and pet damage deposits	$1,500.00
Filing fee	$50.00
Total amount due to the tenants	**$1,650.00**

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **$1,650.00**. 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: May 17, 2010.

Dispute Resolution Officer