

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords for a monetary order for damages to the rental unit, for unpaid rent, for compensation under the Act and the tenancy agreement, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the Landlords entitled to monetary compensation from the Tenants?

Background and Evidence

This tenancy began on February 1, 2008, with the parties entering into a written tenancy agreement. The rent was set at \$1,650.00 per month, and the Tenants paid the Landlords a security deposit of \$825.00 and a pet damage deposit of \$825.00 on February 1, 2008. The Tenants vacated the rental unit in June of 2009, after receiving a 10 day Notice to End Tenancy for unpaid rent due from November 1, 2008. They acknowledge they did not pay the June 2009 rent either. However, the rent for these two months was dealt with in an earlier hearing.

The Landlords claim the Tenants intentionally left the rental unit infested with fleas, that they had damaged the rental unit and that they failed to clean the rental unit before they left. The Landlords claim they have incurred substantial costs to clean and repair the rental unit due to the condition it was left in by the Tenants.

The Landlords also claim that due to the condition the rental unit was left in, and in particular due to the flea infestation, they could not re-rent the unit until October 15, 2009, and claim for 3 ½ months of rental income loss. The Landlords also want the Tenants to pay for utilities for the rental unit during the 3 ½ months.

The Landlords claim as follows:

a.	Loss of rent for 3 ½ months	5,776.00
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c.	House and yard cleaning	6,627.64
d.	Bank fees for NSF cheques	14.00
e.	Filing fee	100.00
	Total claimed	12,703.41

Item c. above (the house and yard cleaning), is comprised of garbage disposal and labour to clean up the rental unit in the amount of \$2,444.38, and also “unusual” repairs and maintenance of \$2,290.77, which included haulage, dump fees, carpet cleaning, pest control and kitchen cleaning.

The work performed at the rental unit by the Landlords or their agents is itemized in invoices supplied in evidence. Some of the items repaired by the Landlords include a sunroof over a porch and removal of trees from the property. The Landlords have also supplied photographs of some of the items claimed for.

The Tenants argue that it should not have taken the Landlords 3 ½ months to have the rental unit cleaned and ready for occupation by another renter. They acknowledge they did leave a freezer and a few other items behind, however, they allege the Landlords are trying to charge for hauling away trees and other yard debris, which was not the responsibility of the Tenants. The Tenants were also upset with the Landlords’ allegations that the Tenants deliberately infested the rental unit with fleas.

Analysis

Based on the above, the testimony and evidence, and a balance of probabilities, I find that the Tenants have breached the Act and Tenancy Agreement by failing to clean the rental unit and remove all their personal property when they vacated.

However, I do not allow the Landlords claims for all the items above.

The Landlords had the obligation of proving the claims that have been made against the Tenants. The standard of proof required is the civil and administrative law standard, which is, claims must be proven on a balance of probabilities. If proof is established on a balance of probabilities, then the Applicant is entitled to the remedies available under the Residential Tenancy Act, and in some cases the common law.

Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that some of the claims of the Landlords are exaggerated, or are for items which are not the Tenants’ responsibility, or have insufficient or vague evidence to support them.

For example, in some instances the invoice charges are mixed together with items the Landlords are responsible for, such as removing trees on the property and cleaning rain gutters. While the Tenants were responsible for yard maintenance in the tenancy agreement, removing trees or cleaning gutters are beyond this requirement, unless specifically required in writing in the agreement.

I also find that some of the invoices provided by the Landlords are vague or uncertain. There are invoices from different companies for work done on different dates, however, these appear to be for doing the same work. For example, there is a September 4, 2009 invoice for freezer removal and cleaning gutters from one company, and then an invoice from October 19, 2009, from another company to remove the freezer and clean the gutters.

The Landlords have also done some major renovations to the property, such as replacing a roof on a sunroom or a summer kitchen. There is no evidence the Tenants damaged the roof, and therefore, this should not have been included in the invoices being claimed against the Tenants.

I also find the Landlords failed to mitigate all their losses, by not trying to have new renters for the unit as soon as possible. I do not accept their claim that the unit could not be rented for over three months and the Landlords could not shorten this.

There were contradictions in the Landlords evidence on this as well. For instance, one of the Landlords testified that the flea treatments carried on into mid September of 2009, while their written submissions declared the treatments ended in August. The invoice from the pest treatment company is from June of 2009, and there is no evidence from this company when the treatments actually stopped.

From the dates on many of the other invoices, it appears the Landlords simply stopped working on the rental unit during the summer months and re-started their work in the early fall.

All of the foregoing leads me to find it more likely that the rental unit could not be occupied for a period of one month following the Tenants vacating, and therefore, I allow the Landlords one month of lost rent for July of 2009, in the amount of **\$1,650.00**.

I also find the Tenants did not clean the unit, or clean the carpets, or deal with the flea infestation before they vacated and this has caused losses to the Landlords.

Therefore, I allow the Landlords **\$100.00** for cleaning the rental unit, **\$472.50** for the flea treatments, **\$200.00** for removing the freezer and other items left behind, **\$200.00** for carpet cleaning and **\$100.00** for lawn cutting and yard clean up. I dismiss all the other claims of the Landlords.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlords have established a total monetary claim of **\$2,772.50** comprised of the above described amounts and \$50.00 towards the fee paid for this application. I have reduced the amount recovered for the filing fee, as the Landlords were only partially successful in their claims.

I order that the Landlords retain the deposits and interest of **\$1,672.65**, in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$1,099.85**.

This order 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: May 10, 2010.

Dispute Resolution Officer