

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for monetary orders for unpaid rent, for compensation under the Act and the tenancy agreement, for compensation for cleaning and repairs to the rental unit, 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

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

This tenancy began in October of 2005, with the parties entering into a written tenancy agreement. The Tenants paid a security deposit of \$650.00 on October 3, 2005. At the end of the tenancy the rent was \$1,390.00 per month.

The evidence provided by the Landlord confirms that the Tenants failed to pay the rent in September of 2009. The Tenants were ordered to vacate the rental unit under an order of possession granted to the Landlord on October 5, 2009, through the direct request process.

The Tenants were served with the order of possession on October 7, 2009. The Tenants had two days to vacate the rental unit or file to dispute it. The Tenants did not file to dispute or review the order.

The Landlord alleges that the Tenants refused to vacate the rental unit under the order of possession and the Landlord had to hire a bailiff, who removed the Tenants on or about October 23, 2009.

The Landlord also claims for costs to repair items at the rental unit, for cleaning, for removal of rubbish left behind by the Tenants, for unpaid utilities and for loss of rent. The Landlord claims that due to the condition the rental unit was left in, she was unable to have new renters until December of 2009, and lost rent for November of 2009.

The Landlord claims as follows:

a.	Rent for October 2009	1,390.00
c.	Repair of walls and torn wallpaper, repainting	2,000.00
d.	Replacement of carpet & labour	4,744.81
e.	Cleaning of rental unit	840.00
f.	Broken window & fireplace glass repairs	330.86
g.	Garbage bin & hauling	394.91
h.	Cost of bailiff and movers	1,813.65
i.	Unpaid utilities	438.06
j.	Filing fee for the Application	100.00
	Total claimed	\$13,442.29

In support of these claims the Landlord provided invoices and receipts.

The Landlord also provided a bylaw enforcement notice from the municipality where the rental unit is located. The notice informed the Landlord of the unsightly condition of the rental property, and required the removal of a significant quantity of debris and materials at the property. The bylaw notice was issued due to the condition of the property during the period of time the Tenants were in possession of the rental unit.

The Landlord testified that the Tenants had ripped wallpaper from the walls and did not repair this. The Landlord also testified that the carpeting in the rental unit had blue paint stains on it, and had a strong odour of urine which went down through to the flooring underneath. The odour could not be removed from the carpet and it had to be replaced. The carpet was five years old at the end of the tenancy.

The Landlord alleges a window and the glass insert in the fireplace were also broken.

The Tenant agreed he broke the window, but he did not know about the fireplace insert.

The Tenant testified he did not smell urine in the carpet when he was there. He claimed the useful life expectancy of a carpet was three to five years. He testified he could provide witnesses and affidavits attesting to the fact the carpet did not smell of urine.

Nevertheless, the Tenants did not supply any evidence, aside from the testimony given by the one who appeared. The appearing Tenant testified that no one told him how to supply evidence for the hearing.

The Tenant testified that they were not removed by the bailiff, as they had already vacated the rental unit when the bailiff and his movers showed up at the rental unit. He testified he did not have time to move and had a third party try to negotiate an extension from the Landlord, which was refused. The Tenant did not dispute he had not paid rent for September or October of 2009, and he testified he did not have time to clean up the rental unit or remove the garbage.

Analysis

Based on the foregoing, the testimony and evidence, and a balance of probabilities, I find that the Tenants have breached the Act, by failing vacate the rental unit under an order of possession, by failing to clean or make repairs to the rental unit prior to vacating, and by failing to pay rent and utilities when due.

Furthermore, I find that due to the condition the rental unit was left in by the Tenants, the Landlord has suffered a loss of rent for one month.

The Tenants had been served with the Notice of Hearing, Application for Dispute Resolution and the evidence of the Landlord on or about December 16, 2009, for a hearing to occur in over four months, on May 5, 2010. The Tenants were supplied information on providing evidence for the hearing in the Notice of Hearing and in the Landlord's document package, however, the Tenants failed to provide evidence, aside from testimony. I find the Tenants had ample opportunity to provide evidence, but neglected or failed to do so.

I further find that the Tenants' refusal to vacate under the order of possession caused the Landlord to have to hire a bailiff and movers. It is clear from the invoices provided by the bailiff and movers that these costs arose from the Tenants' refusal to vacate. The movers were required to move the Tenants' items or rubbish, and the bailiff was there as required by law and the writ of execution.

In other words, had the Tenants simply vacated the rental unit under the lawful order of possession granted to the Landlord, the bailiff and mover costs would have been unnecessary. I find the Tenants' refusal to vacate forced the Landlord to incur the bailiff and mover costs and these costs must be repaid by the Tenants.

I find the breaches of the Tenants have caused the Landlord to suffer a loss. Section 67 of the 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 allow the claims of the Landlord, although I have reduced the amount claimed for the carpet by \$1,264.85 (50%), as it was five years old. I have not reduced the labour to replace it. I note the accepted useful life expectancy for a carpet is 10 years, as described in the policy guideline.

Therefore, I find that the Landlord has established a total monetary claim of **\$12,177.44** comprised of the above described amounts and the fee paid for this application.

I order that the Landlord retain the deposit and interest of **\$673.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$11,504.44**. 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 18, 2010.

Dispute Resolution Officer