

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a Monetary Order to recover unpaid rent and utilities, for damage to the rental unit and for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), regulations or tenancy agreement. The landlords have also applied for an Order to keep all or part of the security deposit and to recover the filing fee paid for this application.

The landlords served the tenants by registered mail on February 15, 2010 with a copy of the Application and Notice of Hearing. The landlord amended their application on May 19, 2010 and sent a copy of this to the tenants by registered mail on May 25, 2010. I find that the tenants were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The female landlord and her agent appeared and the female tenant and her advocate appeared. Both parties 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 landlords entitled to a Monetary Order for unpaid rent and utilities?
- Are the landlords entitled to a Monetary Order for damage to the rental unit, site or property?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords entitled to keep all or part of the security deposit?

Background and Evidence

Both Parties agree that this tenancy started on August 01, 2009. This was a fixed term tenancy which was due to expire on August 01, 2010. Rent for this unit was \$1,200.00 per month and

was due on the first of each month. The tenants paid a security deposit of \$600.00 on July 13, 2007 when they first moved into the rental unit. A move in and move out condition inspection was carried out with both Parties.

The landlord seeks a loss of revenue for February, March, April and May, 2010 as the tenants vacated the rental unit on January 31, 2010. The landlord claims she told the tenants that written notice was required and reminded the tenants that they had a fixed term tenancy in place until August 01, 2010 and would therefore be responsible for rent until the landlords could either re-rent the unit or the tenants could find other tenants to take over the lease. The landlords seek to recover the amount of \$4,800.00 for a loss of revenue for these months. The landlords have provided evidence of their attempts to re-rent the unit. The landlord states the unit was put up for sale on April 05, 2010.

The landlords seeks to recover the sum of \$10.00 in bank fees from the tenants as the tenants rent was paid by automatic transfer each month, The tenants failed to cancel this and from February to May, 2010 the tenants rent was paid in and then taken back from the landlords account. The landlord's bank charged the landlords \$5.00 for both February and March, 2010.

The landlord testifies that the tenants did not pay their share of the water bills which were shared with the owner/occupier of the adjoining duplex from September, 2009 to March, 2010. The landlords claim they had to have the water on after the end of the tenancy due to the remedial work they needed to do in the unit to repair damages caused by the tenants. The landlord's father paid for the outstanding water bills by cheque on March 03, 2010 to the sum of \$111.22.

The landlords seek to recover \$42.33 in electricity charges. The landlord claims the tenants had their electricity account closed and the landlords had to pay a basic charge to keep it connected as they required electricity to show the property to prospective tenants and to carry out the remedial work on the property. The landlord testifies that they had an agreement with the tenants (copy included) that they would reduce the first month's rent by \$100.00 if the tenants painted the basement of the unit. The landlord testifies that this work was not carried out by the tenants.

The landlord claims the tenants caused some damage in the rental unit, the landlord testifies that the tenant had patched some holes in the wall but had not sanded or repainted these, the tenants had ripped the wallpaper in the kitchen area which had to be replaced and peeled paint from the walls going up the stairs. The landlords claim the unit had been freshly painted at the start of the tenancy in 2007. The landlord has provided receipts for painting and decorating to a sum of \$289.58.

The landlord states that at the start of the tenancy it was noted that there was a small hole in the screen at the patio door. She claims the tenants caused this to become a larger rip and the screen had to be replaced at a cost of \$40.00; however no receipt has been provided. The landlord claims there was a yellow streak on the living room carpet which could not be removed despite cleaning, and the carpet had to be replaced at a cost of \$525.19 with an additional \$400.00 in labour costs. The landlord claims she is unsure of the age of the carpet but states it is approximately 10 or 12 years old. The landlord states the tenants had not cleaned the basement carpet and she incurred costs of \$105.00 to have this cleaned and has provided a receipt for this work.

The landlord claims the tenants provided their own washer and dryer and had ripped the dryer duct which the landlord replaced at a cost of \$9.18. The landlord seeks the cost of replacing some burnt out bulbs in the unit at a cost of \$5.93. The landlord seeks the cost of repairing a chain in the toilet system which she claims was broken by the tenants at a sum of \$2.79. The landlord claims the tenants damaged the rail for the drapes which had to be replaced at a cost of \$55.99. The landlord seeks the sum of \$7.99 to repair scratches on the kitchen drawers. The landlord seeks the sum of \$5.29 for door stops as she claims the tenants had allowed the door handles to damage the walls. The landlord seeks the sum of \$8.62 for brackets for the blinds which were damaged by the tenants. The landlord also seeks costs for the replacement of dead bolts and new keys to the unit to the sum of \$58.60. The landlord seeks additional costs for advertising the rental unit in local stores to a sum of \$4.35. The landlords were seeking costs to replace the vinyl flooring at the entrance to the rental unit but withdrew this section of their claim as they agree that this was ripped at the start of the tenancy.

The tenants dispute the landlords claim for unpaid rent or loss of rental income. The tenants advocate submits the argument that the tenancy was frustrated because the male tenant had been in an accident on December 31, 2009 and was in hospital until January 17, 2010. He then

realized he would be in a wheelchair for two to three months and after that time would be on crutches. As there were a number of steps up to the unit and inside the unit he would not be able to negotiate these and a ramp could not be fitted due to the design of the unit. The tenants advocate argues that the house could not be converted for wheelchair use and as such made it impossible for this tenant to live in the unit. Consequently, the tenants advocate argues the rental contract could not be fulfilled. The tenant also states that as the landlords advertised the house for sale in April, 2010 they would not be seeking new tenants from this time.

The tenant does not dispute that they owe water charges from September, 2009 to January, 2010 however she does dispute that they should continue to pay these bills after they had moved out of the unit. The tenant also disputes that they should pay electricity charges after they have moved from the unit.

The tenant disputes the landlords claim that the carpet was damaged to the extent that it had to be replaced. The tenant claims the carpets were old and worn as stated on the move in condition inspection report and the yellow mark was from a children's paint set which was approximately two inches long. The tenant argues that the holes had been patched in the walls and painted over and any other damage was normal wear and tear after a tenancy of over two years. The tenant claims they are not responsible for the cost of replacing the dryer duct, the toilet chain and light bulbs.

The tenant agrees that they did not paint the basement as agreed at the start of the tenancy and does not dispute the \$100.00 they received from their first month's rent to do this work. The tenant agrees that she signed the move out condition inspection report which indicates that there is a yellow stain on the carpet, the patio screen needs replacing, the basement has not been painted, and numerous holes in walls have been filled but not painted. The tenant signed to agree that this report fairly represents the condition of the rental unit.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the landlords and tenants had entered into a fixed term tenancy agreement which was due to expire on August 01, 2010. I further find that the tenants ended this agreement before the end of the fixed term. The tenants argue that the tenancy was frustrated due to the male tenants' accident and his inability to access the rental unit. I refer both parties to #34 of

the Residential Tenancy Policy Guidelines. This guideline states that a tenancy is frustrated where without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. The test for determining that a contract is frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission. While I sympathize with the tenants' condition it is my decision that the contract was not frustrated and the change in circumstances did not totally affect the nature, meaning, purpose, effect and consequences of the contract and the tenancy could have continued in some manner. It is also my decision that the landlords were not at fault and should not be penalized because of the tenants' condition and lack of mobility during that time.

The tenants argue that even if the tenancy was not frustrated then the landlords put the unit up for sale on April 05, 2010. In this instance I find the landlords must attempt to mitigate their losses for unpaid rent by re-renting the unit as quickly as possible. Therefore, as the landlords put the unit up for sale on April 05, 2010 it was no longer available for rent after this time. Consequently I find the landlords are entitled to recover a loss of rental income for February, March and the first five days in April, 2010 to a sum of **\$2,600.00**. I also find the landlords are entitled to recover the **\$10.00** fee charged by the bank as the tenants did not cancel their automatic transfer for the rent.

I have considered the landlords argument for unpaid water charges from September, 2009 to March, 2010. I find as the tenants had moved from the rental unit on January 31, 2010 that they are only responsible for water charges up to this date and the remainder of the charges fall on the landlord. The landlord seeks to recover the sum of \$111.22 however the water bills submitted show the bill is for \$17.25 for each of the outstanding months. The landlord stated that the water bill is divided equally between the two duplex units therefore; I find the tenant's monthly share would be \$8.62. Consequently, I find the landlord is entitled to recover the sum of **\$43.12** from the tenants for September, 2009 through to January 2010.

With regard to the landlords claim for \$42.33 for electricity charges, I find as the landlords applied to reconnect the electricity after the tenants moved out, the tenants are only responsible for the electricity they have used while they lived in the rental unit and therefore the landlords are not entitled to claim this amount from the tenants.

Based on the testimony, evidence and balance of probabilities, I find that the landlords have established their claim for some of the items listed above in damages and repairs to the rental unit. I refer both Parties to the Residential Tenancy Policy Guidelines # 1 which states the landlords and tenants responsibility for the rental unit. According to these guidelines I find the tenants caused some damage to the walls and wallpaper in the unit and the landlords are entitled to claim for the painting and decorating to a sum of **\$289.58**. The landlords are entitled to recover the **\$100.00** given as a rent reduction to the tenants at the start of the tenancy for painting the basement and which by the tenants own admission was not done. I find the landlords are entitled to recover **\$40.00** for the torn patio screen. I accept that the landlords have not provided a receipt for this however; as this is a reasonable cost I have allowed the landlords to recover this amount from the tenants.

At the end of a tenancy of over one year a tenant is expected to clean the carpets of the rental unit pursuant to #1 of the guidelines. I find in this instance the tenants did not clean the basement carpets and as such I find the landlords are entitled to recover the cost of **\$105.00** from the tenants. I also find the tenants are responsible for damage to the dryer duct at a cost of **\$9.18**, blind brackets at a cost of **\$8.62** and a drupe rail at a cost of **\$55.99**. I find that at the end of the tenancy the landlord found some light bulbs had burnt out which the tenants had not replaced and the landlord is entitled to recover this cost of **\$5.93**. As the tenants ended the tenancy before the end of the fixed term, the landlords incurred a cost of advertising the rental unit in local stores. Therefore, I find the landlords are entitled to recover this cost of **\$4.35**.

It is my decision that the landlords are not entitled to recover the cost of replacement carpets. The normal life span of a carpet is 10 years, therefore as the landlord was unsure how old the carpets were but estimated them to be 10 to 12 years old I find the landlords are not entitled to be reimbursed for replacing the carpets as this would have been a cost they would have had to endure at some stage in the future. I also find the landlords are not entitled to recover the cost of the toilet chain or repairs to scratches on the kitchen drawers. With regards to the toilet chain I find it unlikely to be caused by negligence on the part of the tenants and with regard to the

scratches on the drawers, the landlords have not provided sufficient evidence to show that the scratches are anything more than normal wear and tear. The landlords seek to recover the cost of providing door stops, however if these door stops were not already in place at the start of the tenancy then they would not know be the responsibility of the tenants.

The landlords state that the tenants did return the keys to the rental unit at the end of the tenancy; however the landlord seeks to recover the cost of replacing the deadbolts and key. I find in this instance the landlords are not entitled to recover this amount as the stipulation is for the tenant's to return the keys only and should therefore not be liable to pay for new dead bolts which the landlord wants to install.

I also Order, pursuant to Section 38 of the *Act*, that the landlord(s) may retain the full security deposit of \$600.00 plus accrued interest of \$13.34 towards the outstanding rent and damages.

I find that the landlords have succeeded in large and are entitled to recover the filing fee of **\$100.00** from the tenants. A Monetary Order has been issued for the following amount pursuant to section 67 of the *Act*:

Loss of rental income plus bank fees	\$2,610.00
Painting and decorating	\$289.58
Recover reduced rent fee	\$100.00
Carpet cleaning	\$105.00
Repairs	\$119.72
Advertising	\$4.35
Filing fee	\$100.00
Subtotal	\$3,371.77
Less security deposit and accrued interest	(-\$613.34)
Total amount due to the landlords	\$2,758.43

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 **\$2,758.43**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The remainder of the landlords claim is dismissed 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: June 01, 2010.

Dispute Resolution Officer