

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent, for damage to the rental unit and for money owed or compensation or loss or damage under the Residential tenancy Act (Act), regulation or tenancy agreement. The landlord also seeks an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on February 12, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on February 17, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damages to the rental unit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for loss or damage?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This tenancy started on September 01, 2009. This was a fixed term tenancy for six months and was due to expire on February 28, 2010. Rent for this unit was \$765.00 plus \$15.00 parking fees and was due on the first of each month. The tenants paid a security deposit of \$382.50 on August 13, 2009. The tenants gave the landlord their forwarding address by phone on December 09, 2009.

The landlords' agent testifies that the tenants gave notice to end the tenancy in writing on December 30, 2009. In this letter the tenants blamed the fact that the landlords had not carried out repairs to the unit and therefore they would be vacating the unit on January 31, 2010 and would not be paying rent for January. The tenants also state in this letter that the landlord can keep the security deposit in lieu of rent.

The landlords' agent testifies that the tenancy agreement states that the tenants will be charged a late fee for each month rent is not paid on time and the landlords seek to recover rent for January, 2010 and a \$25.00 late fee. The tenancy agreement also states the tenants will be charged a lease break fee of \$325.00.

The landlords' agent testifies that there is a clause in the tenancy agreement which states if carpets and drapes are professionally cleaned at the start of the tenancy; the tenant is required to pay for professional cleaning at termination. The landlords claims the tenants did not have the carpets cleaned at the end of the tenancy and seeks the cost of \$84.00 from the tenants to pay for this work.

The landlords' agent also claims that the tenants left behind a television set, mirrors and some small appliances. The landlord spoke to the tenants by telephone and they agreed the landlord could dispose of these items. The landlord seeks the sum of \$73.50 in haulage costs to remove the tenant's belongings.

The landlord has provided a copy of the tenancy agreement, the move in and out condition inspection reports, and copies of the invoices for carpet cleaning and haulage.

Analysis

The tenants did not appear at the hearing, despite having been sent a Notice of the hearing; therefore, in the absence of any evidence from the tenants I refer both Parties to s. 26 of the *Act* which 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.

Consequently, I find the tenants did not have a right under the *Act* to deduct all or a portion of their rent for January, 2010 and as such the landlord has established his claim to recover the amount of **\$780.00** from the tenants pursuant to s. 67 of the *Act*. I further find the landlord is entitled to recover late fees of **\$20.00** from the tenants as this is the amount mentioned in the tenancy agreement and the landlord has provided no evidence to show he has incurred \$25.00 bank charges.

With regard to the landlords claim for \$325.00 for a lease break fee. I find this was a fixed term tenancy which was due to expire on February 28, 2010. Consequently, the landlord is entitled to receive a monetary award of **\$325.00** because the tenants broke the lease before the end of the fixed term pursuant to s. 67 of the *Act*.

With regard to the landlords claim for haulage fees, the tenants have not appeared at the hearing to dispute the landlords claim that they gave him permission to remove their abandoned belongings. Therefore, I find the landlord has established his claim of **\$73.50** in haulage charges pursuant to s. 67 of the *Act*.

With regard to the landlords claim for the sum of \$84.00 for carpet cleaning; I refer both parties to #1 of the Residential Tenancy Policy Guidelines which states:

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or

she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

The move in condition inspection reports do not state that the carpets had been professionally cleaned at the start of the tenancy as specified in the tenancy agreement. The move out condition inspection does not state that the carpets were left in a dirty condition or had been deliberately or carelessly stained by the tenants. A landlord must provide proof that the carpets were stained and that the tenants were directly responsible for this. Consequently, I find the landlord has not established that the tenants are responsible for cleaning the carpets after a tenancy of five months and this section of the landlords claim is dismissed.

I also Order, pursuant to s. 38(4)(b) of the *Act*, that the landlord may retain the full security deposit of \$382.50 towards the outstanding rent.

As the landlord has been largely successful with his claim I find he is entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent for January, 2010	\$780.00
Lease break fee	\$325.00
Haulage fees	\$73.50
Filing fee	\$50.00
Subtotal	\$1,248.50
Less security deposit	\$382.50
Total amount due to the landlord	\$866.00

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 **\$866.00**. 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 11, 2010.

Dispute Resolution Officer