

DECISION

Dispute Codes

MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulation or tenancy agreement, an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the one of the tenants on May 05, 2010. The tenants attending state that they all accept service of the hearing documents.

Three of the tenants and the male landlord appeared. All 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 money owed or compensation for damage or loss?
- Are the landlords entitled to keep the security deposit?

Background and Evidence

Both parties agree that this tenancy started on October 01, 2009. A tenancy agreement was in place and states that this is a fixed term tenancy for one year and is due to expire on October 01, 2010. Rent for this unit is \$1,770.00 per month and is due on the first of each month. The landlord states rent is normally \$1,740.00 per month however he charged the tenants an extra \$30.00 per month in their rent for the extra utilities used by a fourth person. The tenants paid a security deposit of \$885.00 on October 01, 2009. The tenants gave the landlords their

forwarding address on April 30, 2010. A move in and move out condition inspection were conducted with the landlords and tenants present.

The landlord present testifies that the tenants gave notice to end the tenancy before the end of the fixed term. This notice was given on March 22, 2010 and was received by the landlords on March 24, 2010 with an effective date of April 30, 2010. The landlord testifies that he attempted to re-rent the unit for the same rent and advertised it on the internet sites. The unit was being rented as two sides of the suite and the landlord advertised each side at \$870.00 which would be the original rent for the whole suite without the additional charge for the fourth person.

The landlord testifies that he managed to rent one half of the suite for \$870.00 but could not re-rent the other half of the suite. He had no response to his advertisements so re-advertised it at a lower rent of \$770.00. The suite was re-rented on April 20, 2009 for May 01, 2010. The landlord states the total rent he now receives is \$1,640.00 and has suffered a loss each month to the end of the tenants fixed term tenancy of \$100.00 per month. The landlord had over calculated the sum on his application and now amends this claim to \$500.00 for rent lost to the end of the term of the tenancy.

The tenants dispute the landlords' testimony, they testify that they gave the landlord their written notice to end the tenancy and understood that the landlord had agreed that the tenancy could end on April 30, 2010.

The landlord testifies that the tenants have caused some damage to the rental unit. The landlord claims the kitchen sink was left stained, the oven was not cleaned, the wooden floor in the bedroom had some deep scratches, the fan in the kitchen had not been cleaned, there was a missing oil collector, there was damage to the walls and moulding, the bathroom fan grill was left dirty and there were scratches on the tub. The landlord claims a total sum of \$120.00 for these repairs and cleaning.

The tenants testify that the staining to the sink is normal wear and tear, the oven had been cleaned although they had left some cleaning product still in the oven, the wooden floors were not of a high quality and did suffer some scratches due to normal wear and tear, the tenants do not dispute that there may have been some small holes and nicks out of the wall and moulding as this was the area they stored their snow boards. The tenants state one of them may have thrown away the plastic oil collector as they did not know what it was at the time.

The tenants testify that one or more of them did attend the move out condition inspection and did not sign the form as the landlord told them the decorating would cost \$300.00. The tenants state they felt this was extreme for the work involved. The tenants state they cleaned the suite at the end of the tenancy. They state that they did not act in a negligent manner with the suite and the damages are general wear and tear.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords claim for a Monetary Order for money owed or compensation for damage or loss concerning the loss of revenue to the end of the fixed term tenancy. I refer both Parties to Policy Guideline #3 – claims for Rent and Damages for Loss of Rent which states: the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time the tenant could have legally ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

In this instance I find the tenants ended the tenancy on April 30, 2010 before the end of the fixed term of October 01, 2010 as stipulated in their tenancy agreement. The landlord was able to re-rent the suite but at a reduced rent starting on May 01, 2010. Consequently, it is my decision that the landlord is entitled to recover the difference in the rents of \$100.00 per month for the five months up to the end of the fixed term. The landlord is therefore, entitled to a monetary award of **\$500.00** pursuant to section 67 of the *Act*.

With regard to the landlords claim for cleaning of the rental unit; Under the *Residential Tenancy Act* section 32(2) a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore, the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required.

With regard to the landlords claim for damages to the rental unit I find some scratches on the floor, walls and tub may be expected in a tenancy where there are four people sharing a suite. Therefore, it is my decision that these minor damages would constitute normal wear and tear of the property and as such the landlord must bear the cost of making these repairs.

With regards to the missing oil collector; the tenants admit that they did throw a plastic item away that would likely have been this oil collector. Therefore I find the landlord is entitled to recover this cost of **\$6.72** from the tenants.

As the landlords have been partially successful with their claim I find they are entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the Act.

Loss of revenue for five months	\$500.00
Filing fee	\$50.00
Less security deposit	(-885.00)
Total amount of security deposit to be returned to the tenants	(\$328.28)

Conclusion

The landlord has been partial successful with his amended monetary claim. I HEREBY ORDER, pursuant to Section 38 of the *Act*, that the landlord may retain **\$556.72** from the tenant's security deposit. The remainder of the security deposit of **\$328.28** must be returned to the tenants within five days of receiving this decision.

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 24, 2010.

Dispute Resolution Officer