

DECISION

Dispute Codes

MNDC MNSD MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order to keep the security deposit, for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

The previous Property Manager testified she personally served the male Tenant with the hearing documents on January 15, 2010, at 9:20 a.m. at the Tenants' residence.

The Landlord and previous Property Manager appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy began on May 1, 2008 and was set to switch to a month to month tenancy after April 30, 2009. Rent was payable on the first of each month in the amount of \$1,350.00, and the Tenants paid a security deposit of \$675.00 on April 18, 2008.

The Landlord testified that her records indicate the Tenants vacated the rental unit without notice to the Landlord and that near the end of April, 2009 the tenant who lived in the basement suite of the rental unit contacted the Landlord and advised that the upper Tenant had vacated the unit. The Landlord stated that they are seeking \$1,350.00 for April 2009 rent and confirmed that there is no record in the file of any contact from the Landlord to the Tenants demanding payment for April 2009 rent nor is there a copy of any notices issued for April 2009 rent. The Landlord stated that it was the previous Property Manager who handled this file so she could not provide testimony as to the date the Tenants vacated the unit but that she believes it was sometime in April 2009.

The Landlord stated that they are also seeking loss of rent for May 2009 of \$1,350.00 for lack of proper notice to end the tenancy. The Landlord confirmed that new tenants were secured in July 2009 and that they occupied the rental unit as of August 1, 2009. When asked when and how the Landlord sought new tenants the Landlord advised that the owners took the opportunity to renovate the rental unit while it was vacant. The Landlord confirmed the unit was not available for rent for May 2009 as this is when the

renovations were completed which included plumbing repairs, installing of new carpets, and painting the unit. Once the renovations were completed the Landlord stated that the unit would have been advertised on their website and in local newspapers but that she did not have the exact dates of when these ads occurred.

The Landlord referred to her documentary evidence in support of her claim which included amongst other things a copy of the tenancy agreement; a copy of the last hydro bill; a copy of the written demand for payment of utilities; copies of invoices for cleaning, yard maintenance, and waste removal; a copy of the move-in inspection report completed by the Landlord and Tenant; and a copy of the move-out inspection report completed April 30, 2010 in the presence of only the Landlord as the Tenants abandoned the unit.

The Landlord is seeking \$283.37 for unpaid utilities, \$62.58 for the cost to re-key the locks as the keys were never returned by the Tenants, \$106.40 for the cost to clean up the debris and garbage left behind by the Tenants, \$78.75 for clean up and cutting of the yard, and \$163.80 for the cost to clean the suite.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 89(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlord has applied for a monetary Order which requires that the Landlord serve **each** respondent Tenant as set out under *Residential Tenancy Rules of Procedures*. In this case only one of the two Tenants has been personally served with the Application for Dispute Resolution. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the male Tenant who has been properly served with Notice of this Proceeding. As the second Tenant has not been properly served the Application for Dispute Resolution as required the monetary claim against the female Tenant is dismissed without leave to reapply.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and

2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the tenancy was for a fixed term until April 26, 2009, that rent was payable on the first of each month, and that the Landlord did not receive payment for April 2009 rent. The Tenants abandoned the rental unit sometime before April 30, 2009, causing an end to the tenancy agreement in contravention of section 45 of the Act which provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. In addition section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement therefore the Tenants are responsible for April 2009 rent. As per the aforementioned I find the Landlords have proven their claim for unpaid rent for April 2009 in the amount of \$1,350.00.

The evidence supports the Landlord did nothing to re-rent the unit for May 2009 as the owners took this opportunity to renovate the unit while it was vacant. Based on the aforementioned I find the Landlord has not proven that they mitigated their loss of rent for May 2009 and therefore have failed to prove #4 of the test for damage or loss listed above. Therefore I dismiss the Landlord's claim of \$1,350.00 for loss of May 2009 rent.

The evidence supports the Tenants were responsible for the cost of hydro and that they failed to pay for this utility for the period of February 6, 2009 to April 6, 2009. Based on the evidence before me I find the Landlord has proven the test for damage or loss and I approve their claim of \$283.37.

As per the testimony and the move-out inspection report the Tenants failed to return the keys of the rental unit to the Landlord in contravention of section 37 of the Act which states that when a tenant vacates the rental unit the tenant must give the landlord all the keys. The Landlord provided evidence that the locks were re-keyed on April 28, 2009 at a cost of \$62.58. Based on the aforementioned I find the Landlord has proven the test for damage or loss and I approve their claim of \$62.58.

The evidence supports the Tenants failed to remove all of the garbage and debris in contravention of section 37 of the Act and the Landlord hired a handyman to remove the waste on May 6, 2009 at a cost of \$106.40. I find the Landlord has proven the test for damage or loss and I approve their claim of \$106.40.

Section 17 of the tenancy agreement stipulates the Tenants are responsible for the lawn and yard care and maintenance and the evidence supports the Tenants did not comply with this section of the tenancy agreement when they left the yard and lawn unkempt. The evidence supports that the Landlord hired a lawn care service provider on April 30,

2009 at a cost of \$78.75. Based on the above I find the Landlord has proven their claim in the amount of \$78.75.

The Landlord is seeking reimbursement for the cost of cleaning the interior of the rental unit. While the move-out inspection report confirms the rental unit was not cleaned at the end of the tenancy the Landlord did not have the unit cleaned until July 10, 2009, two and a half months after the tenancy ended and after renovations were done to the unit. Therefore I find the Landlord cannot prove the cleaning was required as a result of only the Tenants' actions or neglect. Based on the aforementioned I hereby dismiss the Landlord's claim of \$163.80.

Monetary Order – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit, and that the Landlord is entitled to recover the filing fee from the Tenants as follows:

Unpaid Rent for April 2009	\$1,350.00
Unpaid Utilities	283.37
Re-keying locks	62.58
Removal of debris and garbage	106.40
Yard clean up and maintenance	78.75
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the landlord)	\$1,931.10
Less Security Deposit of \$675.00 plus interest of \$7.14	- 682.14
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,248.96

Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,248.96**. The order must be served on the respondent male Tenant and is enforceable through the Provincial Court 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: June 25, 2010.

Dispute Resolution Officer