

DECISION

Dispute Codes

For the tenants – MNSD, FF, O

For the landlord – MND, (MNR), FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together. The tenants seek a Monetary Order for the return of double their security deposit and to recover their filing fee. The tenants also raise other issues. The landlord seeks a Monetary Order for damages, for unpaid rent and to recover his filing fee.

The tenants served the landlord by registered mail on February 18, 2010 with a copy of the application and a Notice of the Hearing. The landlord served the tenants by registered mail on February 22, 2010 with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, 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 tenants entitled to the return of double their security deposit?
- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Is the landlord entitled to a Monetary Order for a loss of rental income?

Background and Evidence

Both parties agree that this month to month tenancy started on December 01, 2008 and ended on January 28, 2010. Rent for this unit at the end of the tenancy was \$950.00 per month and an additional \$50 was for a third tenants extra utilities. The tenants paid a security deposit of \$475.00 on November 21, 2008. No move in or move out condition inspection reports were carried out at the beginning and end of the tenancy.

The tenants claim that at the end of the tenancy the landlords' wife had a look around the rental unit and told the tenants that everything looks good and they were good to go. The tenants claim that the landlord kept promising them he would return their deposit and then he told them there were damages to the rental unit and he was going to keep part of it. The tenants testify that they sent the landlord their forwarding address in writing on their application for dispute Resolution. The tenants seek the return of double their security deposit as it was not returned to them within 15 days of the landlord receiving their forwarding address.

The tenants dispute the landlords claims that they caused any damage to the rental unit and claim they even filled holes made by the previous tenants and painted over these with the landlords own paint.

The landlord claims he was waiting to get the tenants forwarding address to make an application for Dispute Resolution. The landlord states that when he got the tenants forwarding address on their application and notice of hearing he was able to file his own application and send a copy of it to the tenants.

The landlord testifies that the tenants did not give him the correct notice to end the tenancy. He states the tenants told him verbally on January 08, 2010 that they would move out. The tenants moved from the unit on January 28, 2010 and the landlord started to advertise it for rent sometime in January and February, 2010. The landlord claims the unit was rented on March 01, 2010 and he seeks a Monetary Order for a loss of rental income for February, 2010 of \$950.00.

The landlord states the tenants caused some damage to the rental suite which he repaired at a cost of \$481.28 including his labour but he agrees that he did not carry out the move in and move out condition inspection as evidence to show that these damages were caused by the tenants during their tenancy.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants application for the return of double their security deposit; I find the landlord states he did receive the tenants forwarding address on February 23, 2010 (the fifth day after they mailed their application for dispute resolution). I accept that this address given on the tenant's application is their forwarding address. As such the landlord had fifteen days from February 23, 2010 to either return the security deposit to the tenants or file an application to keep it. The landlord did not return the security deposit and although he did file an application for Dispute Resolution on February 22, 2010 he did not file an application to keep the security deposit. Consequently, pursuant to section 38(6)(b) I find the tenants are entitled to recover double their security deposit to the sum of **\$950.00** and interest accrued on the original amount of **\$0.80**.

With regards to the landlords claim for loss of rental income; I refer both parties to section 45 of the Act which states:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find the tenants did not give the landlord the required written Notice to end the tenancy and the landlord was unable to re-rent the unit until March 01, 2010. Consequently, I find the landlord is entitled to recover a loss of rental income from the tenants for February, 2010 to the sum of **\$950.00**.

With regards to the landlords claim for damages to the rental unit;; In this matter, the landlord has the burden of proof and must show that the rental unit was damaged by the actions or

neglect of the tenants. This means that if the landlord's evidence is contradicted by the tenants, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The landlord has provided receipts for items used to make repairs to the unit and photographs of some damage however the landlord has provided no corroborating evidence to show that the tenants were responsible for this damage. The landlord did not complete a move in or move out condition inspection report at the start and end of the tenancy. Sections 23 and 35 of the Act say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenants are responsible for damages to the rental unit during the tenancy or if they have left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed. Consequently, I find the landlord has not met the burden of proof in this matter and this section of his application is dismissed.

As the tenants have been successful with their application they are entitled to recover the **\$50.00** filing fee from the landlord. As the landlord has only been partially successful with his application I find he must bear the cost of filing his own application.

A Monetary Order has been issued to the tenants for the following amount:

Double the security deposit	\$950.00
Filing fee	\$50.00
Subtotal	\$1,000.80
Less amount owed to the landlord for Februarys Rent	\$950.00
Total amount due to the tenants	\$50.80

Conclusion

I HEREBY FIND in favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$50.80**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord has been awarded the sum of \$950.00 which has been offset against the tenant's monetary award.

The remainder of the landlords' monetary 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 30, 2010.

Dispute Resolution Officer