

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and by the female tenant.

The landlord's Application requested a monetary order for unpaid rent or utilities and to keep all or part of the security deposit but did not include damage to the rental unit or for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The description in the landlord's application, however, as well as in his supporting documentation clearly indicates the value of the monetary claim includes compensation for damage and cleaning the rental unit. As such, I allow the landlord to amend his application to include this compensation.

At the outset of the hearing the landlord stipulated that he had confirmed that the utilities in that he was seeking in his application have been paid and he no longer is claiming this portion of his application. The landlord's application is therefore amended to exclude the amount of \$348.11 for utilities.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost income; for damage and cleaning required to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 52, 67, and 72 of the *Act*.

Background and Evidence

The landlord's total financial claim is outlined in the following table:

Description	Amount
Lost income	\$1,200.00
12 hours cleaning @ 35.00/hour	\$420.00
7 truckloads of garbage to landfill	\$81.00
New front door weather stripping/installation	\$58.95
Less Security Deposit	(\$600.00)
Total	\$1,159.95

The landlord submitted the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on September 29, 2009 for a month to month tenancy for a monthly rent of \$1,200.00 due on the 1st of the month, with a security deposit of \$600.00 paid on October 1, 2009;
- A copy of a utility bill for electrical service from February 17, 2010 to March 1, 2010 and for water service from October 28, 2009 to March 1, 2010 in the amount of \$348.11;
- A copy of a letter from the tenants dated March 4, 2010 providing the landlord with the tenants forwarding address and requesting return of the security deposit; and
- A summary of details of the landlord's dispute and breakdown of the landlord monetary request dated March 10, 2010.

The tenants have submitted into documentary evidence a summary of events of the tenancy.

The landlord submits that the tenants provided verbal notice to end the tenancy on February 1, 2010 with an effective date of February 28, 2010. The landlord notes that the tenant did not comply with the tenancy agreement that stipulates the notice must be in writing and must be given the day before rent is due.

The tenant testified that her spouse provided the verbal notice to the landlord on January 29, 2010 and confirms that no written notice was provided to the landlord.

The landlord indicated that once the tenant provided notice of ending the tenancy he had to give his landlord notice that he would need to end his own tenancy at another location and as a result he lost his security deposit and a half-month's rent because he gave late notice to his landlord.

Both parties agree that a move in condition inspection was completed but no Condition Inspection Report was completed. The landlord testified that he did not complete a

move out inspection or a Condition Inspection Report at the end of the tenancy because the tenants had already left.

The landlord confirmed in his testimony that he had taken pictures at the end of the tenancy but that he did not submit them into evidence. The tenant testified that they had cleaned the rental unit but did confirm that they had left some garbage bags and a canoe in the front of the rental unit that they wanted to come back and move, but that the landlord had moved the garbage and they were able to retrieve their canoe.

Analysis

When one party in a tenancy makes a claim for loss or damages against the other party, the party making the claim must provide sufficient evidence to prove all of the following four points:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken to mitigate the damage or loss.

In regard to the landlord's claim for costs related to cleaning and damage to the weather stripping, despite the landlord's submission that he took photographs, he failed to submit the photograph's into evidence, therefore failing to provide sufficient evidence that a loss or damage exists.

The landlord also failed to submit any receipts for any of the labour, supplies or fees for garbage removal, therefore failing to establish a value to any loss or damage. As result, I dismiss this portion of the landlord's application.

In the case of verbal notices, I find that where both the landlord and tenant agree on the interpretation and events, there is no reason why the notice cannot be enforced. However when the parties disagree with the undocumented events, by their nature, the events are virtually impossible for a third party to interpret when trying to resolve disputes.

Section 52 of the *Act* and the tenancy agreement require a tenant, when providing a notice to end tenancy, to provide that notice in writing. As the tenants failed to provide written notice to end the tenancy, I accept that the tenants did not provide the landlord with a notice that complies with the *Act*.

Section 7 states that if a landlord claims for compensation for damage or loss resulting from the tenant's non-compliance with the *Act*, regulation or tenancy agreement, the landlord must do whatever is reasonable to minimize the damage or loss.

The landlord testified that he did not try to re-rent the rental unit but that he gave notice to end his own tenancy and moved into the rental unit. As a result I find the landlord took no steps at all to minimize his loss. As such, I dismiss this portion of the landlord's claim.

As the landlord failed to complete a move out inspection at the end of the tenancy as is required under Section 35 of the Act, I find, in accordance with Section 36 that the landlord has extinguished his right to claim the security deposit. I dismiss this portion of the landlord's claim.

As the landlord has been unsuccessful in his application, I find that he is not entitled to recovery of the filing fee for this application from the tenant.

Conclusion

As a result of the above analysis, I find that the tenants are entitled to the return of their entire security deposit and interest held and I therefore grant a monetary order in the amount of **\$600.00**.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: July 06, 2010.

Dispute Resolution Officer