

DECISION

Dispute Codes MND MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on May 5, 2010. The Landlord provided documentary evidence that the registered mail package was signed for on May 7, 2010.

The Landlord and Agent appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

Issues(s) to be Decided

Are the Landlord's entitled to a Monetary Order in accordance with sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Agent and Landlord referred to their documentary evidence, which included among other things copies of photos taken of the rental unit, receipts for services and materials, a copy of the notice from the city advising of unpaid utilities, a copy of the tenancy agreement, a copy of the tenancy addendum, and copies of e-mails and letter communications. Copies of the second package of Landlord's evidence was sent to the Tenant via registered mail and signed received on June 21, 2010.

The fixed term tenancy began on November 1, 2009 and switched over to a month to month tenancy after February 28, 2010. The rent was initially payable on the first of each month in the amount of \$1,650.00; however the rent was reduced to \$1,600.00 per month as of February 2010. The rental unit was vacated by April 18, 2010. A security deposit of \$825.00 was paid on October 16, 2009. No move-in or move-out inspection reports were completed. The Agent confirmed that two Tenants are named on the tenancy agreement; that one moved out prior to the other without notice to end the tenancy; and the remaining Tenant continued to occupy the unit.

The Agent advised a 10 Day Notice to End Tenancy was issued and posted to the rental unit door on April 6, 2010 for \$2,800.00 in unpaid rent. The Agent confirmed that \$1,200.00 was the balance owing for March 2010 and they are seeking \$1,210.00 for April 2010 as they were able to re-rent the unit as of April 23, 2010.

The Landlord and Agent testified the Tenants smoked inside the rental property, even though the tenancy addendum clearly states there was to be no smoking inside the unit. The Tenants did not clean the inside of the rental house nor did they clean up the lawn and yard. The Landlords are seeking \$80.00 for professional cleaning, \$179.15 for carpet cleaning, \$5.13 for a sink stopper, \$11.71 for furnace filters and a deodorizer, and \$80.32 for unpaid utilities, which are amounts supported by the receipts in the documentary evidence.

The Landlords are seeking an additional \$625.00 for additional cleaning and yard maintenance which is 25 hours at \$25.00 per hour. The Agent testified that they logged their hours as being 25 hours worked and later stated that they did not keep a written log of the time spent. The Agent argued the work was performed between April 18, 2010 and April 23, 2010 and involved four adults removing the leaves from the yard, mowing the lawn, weeding the flower beds, planting lawn seed, removing articles left in the carport, and the additional interior cleaning performed by the Landlord. The Agent confirmed that she did not provide photos of the yard before or after the work was completed.

The Landlord confirmed that she cleaned the oven, the fireplace, washed windows, washed and ironed drapes, and that this work took approximately nine hours to complete.

Analysis

All of the testimony and documentary evidence was carefully considered.

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlords and corroborated by their evidence.

The documentation supports two Tenants entered into the written tenancy agreement therefore I find the Tenants to be Co-tenants and are jointly and severally liable for any debts or damages relating to the tenancy.

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 Tenants vacated the rental unit without paying the required rent for March 2010 of \$1,200.00 and for the period of April 1st to 22, 2010 of \$1,210.00, in contravention of section 26 of the Act which provides that a tenant is required to pay rent when it is due in accordance with the tenancy agreement. Based on the aforementioned I find the Landlords have proven the test for damage or loss as listed above and I hereby approve their claim of \$2,410.00 for unpaid rent.

While there is no evidence before me to substantiate the condition of the rental unit at the onset of the tenancy; I find that given the terms of the tenancy agreement which clearly state "Tenants agree that the house is non-smoking" and considering the photographic evidence provided at the end of the tenancy, I find that on a balance of probabilities the Tenants left the property in a state which required cleaning, extensive carpet cleaning, and deodorizing. As per the aforementioned I find the Tenants contravened section 37 of the Act which states when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged.

Upon careful review of the receipts provided by the Landlords in support of their claim for cleaning and damages I find that the receipt for the professional cleaning does not meet the requirements to make claim under the Act as it is issued to a company name that is not listed on the tenancy agreement or on the application for dispute resolution, it does not state the address where the work was performed, and it does not list the date or a description of what cleaning was completed. That being said I do find the

Landlords are entitled to a monetary claim for loss in the amount of \$195.98 which is comprised of \$179.15 for carpet cleaning, plus \$5.13 for the sink stopper, and \$11.71 for the cost of furnace filters.

The Landlords are seeking \$625.00 for 25 hours of their own labour to clean up the yard and for additional cleaning. There is no evidence before me to prove the condition of the yard at the onset or at the end of the tenancy and only one photo which displays a few articles left in the carport. Therefore I find the Landlords have failed to provide sufficient evidence in support of their testimony for the amount of labour required to put the yard into a condition where the property could be re-rented. That being said I do accept the Landlord's testimony that she was required to clean the windows, wash and iron the drapes, and clean the oven as supported by the photographs of how much cigarette smoke and filth was inside the rental unit. Therefore I approve the Landlord's monetary claim in the amount of \$225.00 (9 hours x \$25.00 per hour), in accordance with section 67 of the Act.

The evidence supports the Tenants were responsible to pay the utilities and by failing to do so the Landlord's were charged \$80.32 by the City. Therefore I approve the Landlords request for \$80.32 in accordance with section 67 of the Act.

The Landlords have been primarily successful with their application, therefore I award recovery of the \$50.00 filing fee.

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 Tenant's security deposit as follows:

Unpaid Rent March 2010 (\$1200.00) + April 2010 (\$1210.00)	\$2410.00
Loss / Damages (Carpet Cleaning \$179.15, Sink Stopper \$5.13, and furnace filters \$11.71)	195.99
Landlord's labour costs (9 x \$25.00)	225.00
Unpaid Utilities	80.32
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$2,961.31
Less Security Deposit of \$825.00 plus interest of \$0.00	- 825.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,136.31

Conclusion

I HEREBY FIND in favor of the Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$2,136.31**. The order must be

served on the respondent 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: July 08, 2010.

Dispute Resolution Officer