

## **DECISION**

### **Dispute Codes**

MNR, MND, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order to recover unpaid rent, a Monetary Order for damage to the rental unit, site or property and a Monetary Order to recover the filing fee.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on March 18, 2010. Mail receipt numbers were provided in the landlord's documentary evidence.

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**

- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Are the landlords entitled to a Monetary Order for unpaid rent?

### **Background and Evidence**

This tenancy started on or about May 01, 2006 and ended on July 31, 2009. Rent for this unit was \$1,800.00 per month. The tenants paid a security deposit which was been returned.

The landlords testify that the tenants did not clean the carpets at the end of the tenancy. The landlords had to have these cleaned at a cost of \$199.50. The landlord agrees that the carpets had not been cleaned prior to the tenants taking possession of the rental unit in May, 2006.

The landlords claim the tenants caused some damage to the rental unit. The landlords claim the tenants put up a stair gate and when this was removed at the end of the tenancy they failed to fill in the holes. The landlord's claim they had to fill these holes and as they could not match the paint they had to repaint the entire wall. The landlords claim that some rooms had been painted before the tenants took possession of the unit. The landlords also claim the tenants put up a shelf and when they were asked to take this down they did not fill the holes and the landlord had to make these repairs and paint the wall. The landlords also claim the tenants did not replace two light fixtures which they had removed during their tenancy. The landlords claim these repairs and decorating costs came to the sum of \$150.00.

The landlords claim the tenants did not clean the unit thoroughly at the end of the tenancy. The landlords claim the tenants did not clean behind or under the fridge and stove and that these appliances were on rollers, areas of the kitchen were left unclean, the kitchen storage was left dirty, the bathtub was left dirty, the bathroom cabinet was unclean and the laundry room was left dirty and the machines had not been reconnected correctly. The landlords claim the tenants had left a hamper of dirty clothes and a full garbage can in the garage. The landlords paid to have the unit cleaned at a cost of \$100.00.

The landlords testify that the tenants did not return the keys to the unit until August 03, 2009. Due to the non- returned keys, the repairs, painting and cleaning required to the unit the landlords' claim they could not re-rent the unit for August 01, 2009 and did not re-rent it until the middle of August, 2009 and consequently claim the cost of half a months' rent of \$900.00.

The tenants dispute the landlord's claims. The tenants claim they returned the two keys to the landlords while the male landlord was at the house painting on July 31, 2009. They claim the third key that they returned on August 03, 2009 was a spare key they had had cut during their tenancy.

The tenants claim the carpets had not been cleaned at the start of their tenancy and were very old and dirty. The tenant attending the hearing testifies that she thoroughly vacuumed the carpets at the end of the tenancy.

The tenant testifies that they did leave a few holes where the stair gate and shelving were removed but disputes the landlord's testimony that there were many holes. The tenant claims the walls had many holes left over from a previous tenant.

The tenant attending testifies that the light fixture in the kitchen was unsafe and not working correctly. They replaced this with a new light fixture at their own expense and left this for the landlords at the end of the tenancy. The tenant also testifies that they refitted the original light fixture in the dining room at the end of their tenancy.

The tenant claims that they cleaned the rental unit thoroughly on July 31, 2009 and the landlord did not conduct a move in or move out condition inspection of the unit at the start or end of the tenancy. The tenant states she could not pull out the fridge or stove as they were not on rollers as claimed by the landlord. The tenant claims the finish on the bathtub has worn off which makes it look unclean but it had been thoroughly cleaned at the end of the tenancy. The tenant claims the hamper with dirty clothes was just a small vanity bin which she forgot to remove and this was returned to her by the landlord.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; in this matter it is the landlords who have the burden of proof and must show (on a balance of probabilities) that the tenants caused damage to the rental unit, site or property. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. 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 tenant is responsible for damages to the rental unit during 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.

I find the landlord has only established their claim for damages in part. The tenant admits they did put up a stair gate and some shelving and there were some holes to be filled for these items. However, I find the tenant would be responsible for the cost of filling the holes only as the landlord had not painted these areas of the house previously and had left no matching paint for the tenants to touch up any filled holes. Consequently, I find the landlords are entitled to charge the tenants to fill the holes only and have decided on a nominal cost for this of **\$50.00**. In the absence of any corroborating evidence regarding the remainder of the alleged damage concerning the lights, I find that the landlord has not met the burden of proof to show that the tenants caused damage to the light fixtures and find they had in fact replaced an old damaged light fixture with a new one. As a result, the remainder of this section of the landlords claim is dismissed.

Under the *Residential Tenancy Act* 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 landlords are not entitled to charge the former tenants for the extra cleaning. The Residential tenancy Policy Guidelines #1 also state that a tenant is only responsible for cleaning behind and underneath the refrigerator and stove if they are on rollers. If these appliances are not on rollers and the landlord has not instructed the tenant how to move them without injuring themselves or damaging the floor then the landlord is responsible for moving and cleaning behind and underneath them. 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 and this section of their claim is dismissed.

With regard to the landlords claim for carpet cleaning; I refer both Parties to the Residential Tenancy Policy Guidelines #1 which states that at the beginning of the tenancy the landlord is expected to provide the tenants with clean carpets in a reasonable state of repair. Generally at

the end of a tenancy a tenant would be responsible for steam cleaning or shampooing the carpets after a tenancy of one year. In this instance however, I find the landlord did not provide the tenants with clean carpets at the start of the tenancy and the tenants did thoroughly vacuum the carpets at the end of the tenancy. A landlord cannot expect a tenant to have the carpets steam cleaned or shampooed at the end of their tenancy if they have not been afforded the same standard of cleanliness at the start of their tenancy. Consequently, I find this section of the landlords claim is dismissed.

With regard to the landlords claim that the tenant did not return the keys to the rental unit until August 03, 2009; in this section the tenants' evidence contradicts the landlords' evidence that they did not return the keys. The tenants state that the key they returned was just an additional key they had cut to the unit and that they did return all the other keys at the end of the tenancy. Again the burden of proof falls to the landlord to satisfy me that the tenants did not return the keys to the unit and in this instance I am not satisfied that the landlords have met this burden of proof to show that they were unable to re-rent the unit because of the none returned keys, damages and cleaning to the rental unit. Consequently this section of their claim for \$900.00 is also dismissed.

As the landlords have been largely unsuccessful with their claim it is my decision that they must bear the cost of filing their own application.

### Conclusion

I HEREBY FIND in partial favour of the landlords monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$50.00. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The remainder of the landlords 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: July 09, 2010.

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Dispute Resolution Officer