

DECISION

Dispute Codes MNR MND FF

Introduction

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

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 23, 2010. The Landlord submitted proof of service by means of a print out of the Canada Post website which confirms delivery of each package.

The Landlord and the Resident 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 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on November 1, 2007, and ended in October 2008 after the Tenants were served a 10 Day Notice to End Tenancy for unpaid rent. Rent was payable on the first of each month in the amount of \$508.00. A move-in inspection report was completed in the presence of the Tenants on October 5, 2007 and a move-out inspection was completed in the absence of the Tenants on October 23, 2008.

The Landlord referred to her documentary evidence, in support of her testimony, which included among other things, a copy of the tenancy agreement, a copy of the 10 Day Notice, a copy of the Tenants' payment ledger, and copies of invoices for work performed on the rental unit.

The Landlord testified that they are seeking a monetary order for \$508.00 of unpaid rent for October 2008 as supported by the 10 Day Notice to End Tenancy that was issued on October 8, 2008 for rent which was due on October 1, 2008. They are also seeking

\$1008.00 for cleaning costs which is less than the \$1344.00 which was paid to the professional cleaner. The Landlord argued that the Tenants left the rental unit in a deplorable state with alcohol and the remains of freezie pops spilled all over. A claim of \$675.28 for the depreciated cost to replace the carpet as supported by the invoice of \$771.74. The Landlord argued that the carpet was brand new at the onset of the tenancy and the Tenants ruined it. Again there were multiple stains on the carpet left by what appears to be freezie props and alcohol. There were numerous holes in the walls which cost the Landlord \$238.35 to repair and repaint. This unit was in good condition at the onset of the tenancy, therefore the Landlord is seeking full reimbursement of the drywall repairs.

The Resident Manager testified that he has been employed at this unit since June of 2006 and he conducted the move-in and move-out inspection reports. He advised the unit is a two level, four bedroom townhouse with 1 ½ bathrooms. He confirmed the carpet was new at the onset of the tenancy and the walls were in good condition. He commented on the condition at the end of the tenancy stating that there were stains everywhere, a whack of holes in the walls, the drawer fronts on the kitchen cabinets were burnt, and there was debris everywhere.

Neither the Resident Manager nor the Landlord could explain why the carpet replacement invoice is dated December 1, 2008 and the carpet cleaning invoice is dated four days later on December 5, 2008, with a notation that states "attn Geri we were able to clean living room carpet no need to change out." Nor could they provide testimony of why it took six weeks to have the work completed.

Analysis

All of the testimony and documentary evidence was carefully considered.

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 failed to pay October 2008 rent in contravention of section 26 of the Act which states a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the aforementioned I find the Landlord has proven the test for damage or loss, as listed above, and I approve their claim for \$508.00 of unpaid rent.

The move-out inspection report indicates “the unit will need to be cleaned top to bottom” which supports the cleaning invoice which notates that it took 32 hours to perform the cleaning. Section 37 of the Act provides that when a tenant vacates a rental unit the tenant must leave the unit reasonably clean and undamaged. Based on the aforementioned I find the Landlord has proven the test for damage or loss and approve their request for \$1,008.00 in cleaning costs (75% of the total invoice).

The Landlord has provided contradictory evidence in support of their claim for carpet replacement. In one receipt it shows the carpet was replaced in the living room on December 1, 2008 and on another receipt it shows the carpet was professional cleaned on December 5, 2008 and the living room carpet did not need to be replaced or changed out. In the presence of this contradictory evidence I find the Landlord has failed to prove they mitigated their loss, possibly having the carpet replaced when they were able to have it cleaned. Therefore, in accordance with section 67 of the Act, I approve a claim in the amount of \$189.00, which represents the cost to have the carpet professional clean.

The evidence supports the walls in the rental unit were damaged during the tenancy and were not repaired by the Tenants, in contravention of section 37 of the Act. This damage caused the Landlord a loss of \$238.35 as proven by the receipt. The Landlord has proven the test for damage or loss and therefore I approve the Landlord’s claim of \$238.35.

The Landlord has been primarily successful with their application; therefore I award recovery of the filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim as follows:

Unpaid Rent for October 2008	\$508.00
Cleaning costs	1,008.00
Carpet cleaning	189.00
Wall repairs	238.35
Filing fee	50.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$ 1,993.35

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 **\$1,993.35**. The order must be served on the respondent Tenants and is enforceable through the Provincial Court 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 22, 2010.

Dispute Resolution Officer