

DECISION

Dispute Codes MND, MNR, MNSD, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party. The tenants confirmed service of the landlord's application and evidence.

It was determined that the tenants had submitted late evidence for the hearing. The late evidence was not accepted; however, the tenants were permitted to read from documents they intended to rely upon and the landlord was provided the opportunity to respond to the documents. The tenants read from a letter that was faxed to them on November 7, 2009 by the landlord. Upon receipt of the late evidence I referred to this one document in making my decision.

Issues(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants?
2. Is the landlord authorized to retain the security deposit or should it be returned to the tenants?

Background and Evidence

The parties provided undisputed evidence as follows. The tenancy commenced November 15, 2006 and the tenants paid a \$1,150.00 security deposit about that time.

The tenants were required to pay rent of \$2,300.00 on the 1st day of every month. On November 7, 2009 the landlord faxed a document to the tenants indicating that as of

September 25, 2009 the landlord gave the tenants two months notice to end tenancy but the landlord and tenants agreed the tenants would vacate on December 15, 2009. The fax of November 7, 2009 also indicated the tenants would pay only half of the rent on December 1, 2009. The tenants did not pay rent for the month of December 2009. The tenants vacated their possessions December 15, 2009 but the keys were not returned until the end of December 2009. The landlord prepared a move-in inspection report and move-out inspection report. The move-out inspection was conducted January 5, 2010 with the female tenant. The move-out inspection report indicates the tenancy ended December 31, 2009. The tenant authorized the landlord to retain \$500.00 from the security deposit for damages to the rental unit on the move-out inspection report.

In making this application, the landlord is seeking compensation for the following amounts:

Unpaid rent – December 2009	\$ 2,300.00
Painting	2,000.00
Cleaning	525.00
Filing fee	<u>50.00</u>
Total claim	\$ 4,875.00

In support of the landlord's claims the landlord testified the tenants damaged the walls and that the unit needed to be repainted. The landlord submitted the unit was repainted just before the tenancy began. The landlord submitted an invoice in the amount of \$2,000.00 for wall repairs and painting dated January 25, 2010. After the painting was completed the unit was cleaned. The landlord provided an invoice dated March 24, 2010 for cleaning in the amount of \$525.00. Upon enquiry, the landlord testified that after the tenancy ended he renovated the property and sold it.

The tenants submitted that they were verbally told by the landlord in September 2009 that the landlord wished to end the tenancy because the landlord would be moving in to

the rental unit. The tenants requested the landlord provide them with proper notice to end the tenancy twice and the only document the landlord provided was the fax of November 7, 2009. The tenants were of the position they were entitled to one month of compensation as the landlord was ending the tenancy for landlord's use. Accordingly, the tenants had requested the landlord refund them one-half of the rent they paid for November since they agreed to vacate December 15, 2009. The tenants testified that on December 15, 2009 they requested the landlord pick up the keys and bring a cheque for one-half of November's rent but the landlord refused and did not pick up the keys. At the end of December 2009 the landlord contacted the tenant to obtain the keys.

The landlord responded to the tenants' submissions by stating he provided the fax of November 7, 2009 at the request of the tenants so that they could show their contractor that they had to move out December 15, 2009. The tenants deny this statement and pointed out that their house was not ready for occupancy until May 2010 and they had to move twice.

The landlord also submitted that the tenants refused to give him the keys unless he brought a cheque on December 15, 2010.

During the hearing the move-out inspection report was reviewed. The landlord explained that he instructed the tenant to pick an amount that represented damages to the rental unit rather than argue with the tenant. The tenant acknowledged that there was some damage to the rental unit and that the landlord instructed her to determine the amount that represented damages to the rental unit. The tenant estimated \$500.00 was a fair deduction for damages caused to the rental unit in completing the move-out inspection report.

Analysis

Section 21 of the Residential Tenancy Regulation provides that a condition inspection report is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or tenant has a preponderance of evidence to the contrary.

In this case, I was presented with a condition inspection report that reflects some damages to the rental unit and provision for a \$500.00 deduction for damages to the rental unit. The landlord presented an invoice for repairs and painting in the amount of \$2,000.00. I do not find the landlord's evidence indicates that the \$500.00 reflected on the condition inspection report is unreasonable. Especially when I consider that the landlord intended to sell the unit when it was repainted and hearing that the unit was last repainted in 2006. Interior paint has a useful life of approximately 4 years; thus, I find the majority of the useful life of the interior paint was exhausted. Therefore, I deny the landlord's claim for additional compensation for painting.

I further find that the authorized deduction for \$500.00 on the condition inspection report was fair compensation for cleaning that needed to be done at the end of the tenancy. I did not find the cleaning invoice of March 2010 indicative of cleaning required at the end of the tenancy as the landlord had the unit cleaned after he renovated and had the unit painted. Therefore, I deny the landlords claim for additional compensation for cleaning.

I also rely upon the condition inspection report in concluding that the tenancy ended on December 31, 2009. Upon review of the inspection report it appears the date was written by the tenant and the disputed testimony of the parties with respect to what transpired on or about December 15, 2009 did not satisfy me that the tenancy ended prior to December 15, 2010.

It is undisputed that the tenants did not pay rent for the month of December 2009. At issue for me to determine is whether the tenants had the right to withhold rent for December 2009. Under the Act, where a tenant receives a 2 Month Notice to End

Tenancy for Landlord's Use of Property a tenant may withhold their last month of rent under section 51 of the Act.

In this case a proper Notice to End Tenancy was not issued by the landlord. On the balance of probabilities, I accept that the landlord had verbally told the tenants he desired the property for his own use and that the tenants requested proper Notice. I reject the landlord's claim that he provided the November 7, 2009 fax to the tenants so the tenants could show the document to their contractor as this explanation is unlikely given the tenants residence was not ready until May 2010 and the tenants had to move twice. Therefore, I conclude that despite the tenants' request for a proper Notice to End Tenancy the landlord would not provide such but provided his own letter to in an attempt to regain possession of the rental unit for his own use.

Under section 5 of the Act, landlords and tenants may not avoid or contract out of the Act. Based upon the above, I find the landlord avoided the Act by refusing to give proper Notice to End Tenancy and the tenants ended the tenancy, at their expense, because they received the landlord's letter of November 7, 2009. Therefore, I find the tenants are entitled to the same compensation they would have received under section 51 of the Act had the landlord adhered to the requirements of the Act and issued a proper Notice to End Tenancy for Landlord's Use of Property.

Given the above, I find the tenants were entitled to withhold rent for the month of December 2009 and I deny the landlord's claim for unpaid rent.

I uphold the tenant's authorization for the landlord to retain \$500.00 of the security deposit and since I have denied the landlord's monetary claims made with this application I order the landlord to return the balance of the security deposit, plus accrued interest, to the tenants forthwith.

I calculate the tenants are entitled to a refund of \$650.00 (\$1,150.00 - \$500.00) plus \$35.78 in interest. I provide the tenants with a Monetary Order in the amount of

\$685.78 to serve upon the landlord and enforce in Provincial Court (Small Claims) if necessary.

Conclusion

The landlord's monetary claims have been dismissed. The landlord is ordered to return the balance of the security deposit and accrued interest to the tenants forthwith. The tenants are provided a Monetary Order in the total amount of \$685.78 to serve upon the landlord.

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 14, 2010.

Dispute Resolution Officer