

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the applications by both the landlord and the tenants for monetary order and an order to retain the security deposit. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?

Are the tenants entitled to a monetary order as claimed?

Landlord's Claim

- 1. Unpaid rent.** The landlord seeks to recover \$400.00 in unpaid rent for the month of March. The parties agreed that the tenants were obligated to pay \$800.00 per month and that on February 16 they gave written notice advising that they would be ending their tenancy on March 16. Upon receipt of the tenants' notice the landlord advised them that their notice could not be effective until March 31. The tenants paid \$400.00 in rent for the month of March. Section 45 of the Act provides that tenants must give at least one month notice which cannot be effective until the end of the next rental period. In other words, a notice given in February cannot be effective until March 31. Section 53 of the Act operates to automatically change incorrect effective dates. I find that pursuant to section 53 of the Act, the tenants' notice was effective on March 31 and that the tenants are obligated to pay \$400.00 in rent for the month of March. I award the landlord \$400.00.
- 2. Dryer damage.** The landlord seeks to recover \$375.00 as the cost of replacing the drum in the dryer. The parties agreed that at some point in the tenancy an ink pen leaked in the dryer. The landlord testified that the ink stained the dryer drum and testified that she has been told that the ink could stain clothes in the dryer. The

landlord testified that the dryer is two years old. The tenants acknowledged that a pen “exploded” in the dryer but testified that the blue stain was caused by blue jeans in the dryer. I do not accept the tenants’ theory as to how the stain appeared in the dryer and find that the ink caused the stain. However, in the absence of a professional opinion that an ink-stained dryer drum could stain clothing, I do not accept that a stain which is several months old could continue to release colour. I find that the landlord is entitled not to the cost of replacing the drum, but to the diminished value of the dryer. I find that an award of \$50.00 will adequately compensate the landlord and I award the landlord that sum.

3. **Cleaning.** The landlord seeks to recover \$367.50 paid to have the rental unit cleaned. The parties agreed that the tenants moved out of the rental unit on February 28. The landlord testified that on March 1 she served a 24 hour notice that she would be entering the unit on the next day. The notice of entry was entered into evidence and states that it is “based on the suspicion of abandonment [*sic*] of the property.” The tenants claimed that on or about March 2 the landlord told the tenant J.H. that the tenants should not return to the rental unit. The landlord denied having made that statement. The landlord testified that the tenants did not communicate with her regarding cleaning but with her evidence the landlord submitted a copy of a letter dated March 4 in which the tenants asked for an opportunity to return to the rental unit to clean. The landlord had the rental unit professionally cleaned on March 9. The Act and Regulations deal with abandonment of personal property but not with abandonment of a unit *per se*. In this case, the tenants had paid part of their rent for the month of March and should have had exclusive possession of the unit at least until the point when their rental payment expired. Their notice to end their tenancy did not take effect until March 31 as the effective date was automatically changed by the Act and the landlord did not have an order of possession. I find that the landlord had no right to treat the rental unit as abandoned. I find that the landlord acted prematurely in cleaning the rental unit and that she deprived the tenants of the opportunity to perform cleaning. The landlord’s claim for the cost of cleaning is dismissed.

4. **Repair of blinds.** The landlord seeks to recover \$55.97 as the cost of repairing blinds in the rental unit. The landlord testified that one of the blinds in the unit was not extended to its full length in order to prevent it from resting on a heat register. The blinds came into contact with the register during the tenancy and sustained damage as a result. I find that the landlord introduced the hazard by keeping blinds which did not properly fit the window. I find that the tenants cannot be held liable for the damage as the landlord should reasonably have known that keeping ill-fitting blinds on the window over a register might result in damage. I dismiss the claim for the repair of blinds.
5. **Drywall repair.** The landlord seeks to recover \$50.00 which she estimates will be the cost of repairing a hole in the drywall. The tenants testified that they are unsure whether the hole was there at the start of the tenancy. The landlord provided a copy of the condition inspection report showing that there was no notation as to wall damage in the living room. I find that it is more likely than not that the tenants caused the damage to the wall and I find that this should be characterized as beyond reasonable wear and tear. I find the landlord's repair estimate to be reasonable and I award the landlord \$50.00.
6. **Cushion replacement.** The landlord testified that two sofa cushions were damaged during the tenancy and provided a receipt showing that it cost \$26.61 to replace the cushions. The tenants testified that the cushions were not in good shape at the beginning of the tenancy. The landlord bears the burden of proving her claim and in the absence of evidence as to the condition of the cushions at the beginning of the tenancy I find that the landlord has failed to meet her burden of proof. The claim is therefore dismissed.
7. **Filing fee.** I find that the landlord is entitled to recover the \$50.00 cost of filing her application and I award the landlord that sum.

Tenants' Claim

1. **Double security deposit.** The tenants seek the return of double their security deposit. Section 38 of the Act provides that within 15 days of the later of the end of

the tenancy and the date the landlord receives the forwarding address in writing, the landlord must either return the security deposit or make an application to retain it. If the landlord fails to act within the prescribed timeframe, the landlord must pay double the deposit. In this case the landlord made her claim on March 10, before the tenancy ended. I find the landlord complied with the statutory timeframe and accordingly dismiss the tenants' claim.

2. **March rent.** The tenants seek to recover rent paid for the first half of March as they claim they were denied access to the rental unit. The tenants testified that they never surrendered the keys to the unit. The landlord testified that she did not change the locks to the unit and at no time denied the tenants access. While the landlord having cleaned the rental unit before the end of the tenancy deprived them of the opportunity to clean the unit, I find that her actions did not deprive them of access. I therefore dismiss the tenants' claim for the return of their rent.
3. **Miscellaneous items.** The tenants seek to recover the value of items they claim were left behind at the rental unit. The tenants testified that they left several items including pots and pans, a sweater and several glasses, in the rental unit after they moved out the rest of their belongings at the end of February. The tenants claimed that the landlord packaged some of the items, broke several of the glasses and failed to return their cookware and sweater. The tenants testified that their witness, P.B., picked up the items from the landlord and that she found broken glass in the bag of belongings. P.B. testified at the hearing and testified that she did not discover any glass in the bag containing the tenant's belongings. I find that the tenants' credibility on this point is highly questionable and therefore dismiss their claim.
4. **Plumbing repairs.** The tenants seek to recover \$55.00 as the cost of making repairs to the toilet and fuel costs for traveling back from work to attend to repairs. The tenants testified that on two occasions the landlord telephoned the tenants at work to advise that she heard running water in the unit. Each time the tenants returned to the rental unit to ensure there was no flooding and on the second occasion, the tenant J.H. purchased and installed a part for the toilet. The landlord's witness P.L. testified that during the tenancy he repaired the toilet and showed the

tenant J.H. how the toilet operated differently from other toilets and how J.H. could make repairs in the future if required. The landlord testified that the repairs made by the tenant were ineffective. In order to prove their claim the tenants must prove that the repairs were warranted. There is no dispute that the landlord heard running water and that something was happening with the toilet. I find that the landlord was justified in calling the tenants and I find that the tenants have not proven that their repairs were effective or required. The claim is dismissed.

Conclusion

The tenants' claim is dismissed in its entirety. The landlord is awarded \$550.00 which represents \$400.00 in unpaid rent, \$50.00 for damage to the dryer, \$50.00 for drywall repairs and \$50.00 for the filing fee. I order the landlord to retain the \$400.00 security deposit in partial satisfaction of her claim and I grant the landlord an order under section 67 for the balance owing of \$150.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: July 09, 2010
