

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing considered the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for orders as follows:

- a monetary award for unpaid rent pursuant to section 67;
- a monetary award for damage to the rental premises pursuant to section 67;
- authorization to retain all or a portion of the security deposit in partial satisfaction of the monetary award pursuant to section 38; and
- permission to recover the filing fee for this application pursuant to section 72.

Both parties attended this hearing and were given a full opportunity to be heard, to make submissions and to present evidence. The tenants confirmed that they received the landlord's Application for Dispute Resolution by registered mail. I accept that the tenants were duly served with the landlord's application for dispute resolution.

The tenants provided written evidence to the Residential Tenancy Branch on July 28, 2010. They testified that they did not know that they were supposed to send the landlord a copy of their evidence package. They did not do so. The landlord objected to having the tenants' written evidence package considered, as he had not been given an opportunity to review this evidence before the hearing. I have not considered the tenants' written evidence package, although I considered oral testimony provided by the parties.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent for the month of June 2010?

Is the landlord entitled to a monetary order for damage to the rental premises caused by the tenants? Is the landlord entitled to retain the security deposit in partial satisfaction of the monetary award? Is the landlord entitled to recover the cost of his filing fee?

Background and Evidence

The landlord testified that this month to month tenancy commenced on July 1, 2009. Rent was set at \$900.00, payable on the first of each month. The landlord continues to hold the tenants' \$450.00 security deposit plus interest. (No interest is payable over this period.)

On May 7, 2010, the tenants gave the landlord written notice that they were planning to end the tenancy on May 15, 2010. In their written notice, they gave the landlord permission to keep their security deposit due to the late notice they provided. The landlord did not agree to waive his right to claim unpaid rent for June 2010. The tenants vacated the rental premises on May 28th, returning their key to the landlord that day.

The landlord testified that he advertised the rental premises, but was unable to rent this suite for any portion of June 2010. A new tenant moved into the premises on July 1, 2010. He asked for a monetary award of \$900.00 to recover his lost rent for June 2010.

The tenants said that they requested the return of their security deposit shortly after they vacated the property. The landlord testified that he received their request for a return of their security deposit and their forwarding address on May 30, 2010. By that time, he said he had already filed for dispute resolution and retention of the security deposit in partial satisfaction of the monetary award he was seeking.

The landlord also testified that the tenants were negligent in causing damage to the flooring of the rental unit. He said that the tenants' negligence in attending to a clogged drain in the kitchen sink led to a flood in that area. He testified that a second flooding incident occurred when the tenants were responsible for plugging the toilet and leaving

the toilet running. He testified that he incurred costs of \$67.00 and \$44.80 for rental of a dehumidifier as a result of their actions. He also submitted a written estimate of \$2,327.63 to replace the laminate flooring damaged by the excess water and flooding that he attributed to the tenants' negligent actions.

The landlord did not provide a copy of a condition inspection report, from either the commencement of the tenancy or when the tenants moved out. The tenants maintained that no signed condition inspection report was created for this tenancy.

The tenants testified that they encountered problems with the toilet from the time they moved into these premises. Although the tenants confirmed that there was water damage caused by the two floods in question, they denied negligence on their part. They said that the problems stem from plumbing problems in the building. The landlord testified that he had new plumbing installed in the property prior to their tenancy and that he has not had any problems of this nature in the rest of this building.

Analysis

The uncontested evidence of the landlord supports his claim for a monetary award of \$900.00 for his loss of rent for June 2010. The tenants did not provide the landlord with sufficient notice to avoid being held responsible for June 2010 rent to the landlord. I am satisfied that the landlord has attempted to rent the premises and has a tenant in place for July 2010. I accept that the landlord attempted to mitigate his rental loss for June 2010. I grant the landlord a monetary order in the amount of \$900.00 to compensate him for lost rent resulting from the inadequate notice to end tenancy provided by the tenants.

Since the landlord had a valid claim for a monetary award for lost rent for June 2010, I accept his application to retain the tenants' security deposit as partial satisfaction of that award. I deny the tenants' subsequent request for return of the security deposit because they did not fulfill all of their rental obligations resulting from this tenancy.

Sections 23 and 24 of the *Act* outline the process whereby a condition inspection report is to be conducted at the commencement of a tenancy. Section 23(1) establishes that “the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.” The tenants testified that no such signed inspection report exists; the landlord did not provide evidence to refute their claim in this regard. Similar provisions are outlined in sections 35 and 36 of the *Act* with respect to the end of a tenancy. The landlord testified that no move-out condition inspection report was prepared at the end of this tenancy.

The landlord is responsible for ensuring that move-in and move-out condition inspection reports are completed. These inspections can reduce the potential for disagreements regarding the state of the rental premises at the commencement of a tenancy.

However, the failure to conduct these inspections and document the condition of the premises at the beginning and end of this tenancy does not prevent the landlord from making an application for a monetary award for damage caused by the tenants.

Although there was no condition inspection report prepared, the tenants admit that the floods occurred and that there was water damage to the laminate floor. They maintain that they were not negligent in causing this damage. They provided insufficient evidence to support their contention that the plumbing in the rental premises was problematic from the commencement of their tenancy. They submitted no letters or correspondence asking the landlord to make repairs to the plumbing. In their May 2, 2010 email to the landlord, they also acknowledged that they bore some responsibility for damaging the floors and indicated a willingness to apply some or all of the security deposit to repair the floors.

In this case, determining causality of the damage to the flooring and assessing the state of the rental premises at the beginning of the tenancy is difficult to determine as there are no condition inspection reports. However, on the basis of the evidence submitted, I accept that the tenants bear some responsibility for the flooding damage to the laminate flooring and estimated cost of replacing this flooring. I accept that the tenants are

responsible for the landlord's documented claim for his rental of dehumidifiers in the amount of \$67.00 and \$44.80. Under these circumstances, I also award the landlord \$1,163.81, one-half of the estimated cost of the replacement laminate flooring. I do so because the evidence indicates that the landlord and tenants should share the cost of replacing the laminate flooring.

I authorize the landlord to retain the security deposit in partial satisfaction of this monetary award. I allow the landlord to recover his filing fee for this application from the tenant. I make a monetary order in favour of the landlord as follows:

June 2010 Rent	\$900.00
Monetary Award for Landlord's Cost of Renting Dehumidifiers (\$67.00 + 44.80)	111.80
Monetary Award for Flooring Damage	1,163.81
Less Security Deposit (no interest payable)	-450.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1,775.61

Conclusion

I grant the landlord a monetary order as set out above.

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*.