

INTERIM DECISION

Dispute Codes MND MRN MND MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlords to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on June 17, 2010. A copy of the amended application was served to each Tenant via registered mail on August 11, 2010. The Tenants confirmed receipt of the hearing documents, evidence and the amended application.

The Landlords and the Tenants appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Are the Landlords entitled to a Monetary Order pursuant to sections 67 and 72 of the *Residential Tenancy Act*?

Preliminary Issues

The Landlords argued that they received the Tenants' evidence late as they received it via courier on August 19, 2010.

I confirmed with the Landlords that they have filed a claim for loss through their insurance company as noted in their evidence submission. At this date the insurance claim is pending. I explained to the Landlords how they must mitigate their losses, in accordance with section 7 of the Act, and therefore I cannot hear testimony or consider

claims relating to any items currently being considered in their insurance claim. Once the insurance claim has been finalized the Landlords will be at liberty to file a claim for Dispute Resolution for any losses relating to this tenancy that are not considered or covered under their insurance claim and have not been considered or applied for in this decision.

Background and Evidence

The undisputed testimony was the fixed term tenancy began on March 15, 2008 and switched to a month to month tenancy after March 31, 2010. Rent was payable on the first of each month in the amount of \$1,800.00 and the Tenants paid a security deposit of \$1,000.00 on March 6, 2008. Both parties confirmed the tenancy ended after the Landlords issued a 10 Day Notice to End Tenancy for unpaid rent. The keys to the rental unit have never been returned to the Landlords. A move in condition report was not completed at the onset of the tenancy. At the end of the tenancy a condition inspection report was completed in the presence of the male Tenant who signed the inspection report agreeing to what the Landlords wrote pertaining to the condition at the beginning of the tenancy, two years prior to signing the document, and at the end of the tenancy which was completed and signed on June 2, 2010.

The rental unit was built in approximately 1947. The Landlords purchased the house in February 2007, as a rental property, and had one tenancy prior to these Tenants taking possession in March 2008. No maintenance or renovation work was performed on the rental unit by the Landlords prior to the end of this tenancy as the property had undergone renovations prior to the Landlords' purchase.

The Landlords testified that the Tenants retained possession of the rental unit until June 20, 2010, as they failed to remove all of their possessions from the unit which initiated the Landlords assisting the Tenants to move three truck loads of possessions to the Tenants' new residence and two loads to the dump.

The Landlords' current claim consists of the following nine (9) items for which they provided testimony, documentary and photographic evidence:

- 1) Unpaid rent for May 2010 and June 2010 for \$3,600.00 (2 x \$1,800.00). The Tenants failed to pay May or June rent and occupied the unit with their possession to at least June 20, 2010. The Tenants still have possessions remaining at the rental unit that the Landlords stated they do not know what to do with in accordance with the Act. A 10 Day Notice to end Tenancy was served personally to the male Tenant who signed receipt of on May 25, 2010.
- 2) Oil replacement of \$300.00. The rental unit requires oil for the heat and hot water. The Landlords state they had a verbal agreement with the Tenants that the Landlords would provide \$300.00 of oil in the tank at the onset of the tenancy and the Tenants would leave \$300.00 of oil in the tank at the end of the tenancy. There is nothing noted on the written tenancy agreement about the \$300.00 oil requirement. The Landlords referred to their documentary evidence which supports that the Landlords paid \$318.06 for oil delivery on June 2, 2010.
- 3) Unpaid water utility bill of \$342.14. The tenancy agreement did not include the costs of water and the Tenants were required to put the utility bills in their own name. The Landlords referred to the evidence which included a copy of a "Notice of Overdue Water Account" dated July 6, 2010 for service at the rental unit.
- 4) Replacement of broken fridge parts \$94.82. A new fridge was purchased for the rental unit on May 31, 2008 and based on the evidence one fridge drawer and two door racks were required to be replaced and were ordered on June 12, 2010.
- 5) Four broken windows replaced at a cost of \$600.00. The Landlords confirmed that they knew the windows were broken during the tenancy and they chose not to replace or repair the windows. Instead the Landlords and/or the Tenants boarded up or closed off each window as it broke. The windows were original from the 1947 construction and were single pain. The Landlords paid \$3,095.40 to replace all the windows in the rental house and are seeking a portion of the total cost for the four windows that were broken during the tenancy.
- 6) Dumps fees of \$400.00. The Landlords are seeking this estimated amount to cover potential costs they will incur when they discard approximately 4 to 5 yards of pee gravel that was left at the rental unit by the Tenants. The Landlords argued the male Tenant is in the roofing business and that he brought this pee

gravel waste that is full of nails from a roofing job instead of paying to have it disposed. The Landlords confirmed that to date they have not removed this material as they are waiting until they finish the major renovation they are completing in the rental property before they pay to remove any waste materials.

- 7) Dump fees of \$300.00. This amount is an estimated amount that the Landlords are anticipating they will incur to remove or discard roofing materials (flashing, cedar shakes, shingles, and scrap metal) that were left at the rental unit by the Tenants. The Landlords have not removed these articles to date as they are awaiting the completion of their renovation project before paying to have this material removed.
- 8) Labour costs of \$200.00. The Landlords agreed to offer their services and to hire a labourer to assist in moving three truckloads of the Tenants' possessions to their rental unit on June 20, 2010, and two loads to the dump. The Labourer charged \$100.00 when added to \$50.00 for each Landlord totals \$200.00.
- 9) Removal of the remaining possessions \$200.00. The Landlords are seeking an estimated amount of \$200.00 for when they are faced with removing the last of the Tenants possessions. The items which include, among other things, a couch/hide a bed, motorbike, lawnmowers, pet cages etc., are still at the rental property and have not yet been removed as the Landlords did not know what to do with this property.

The Tenants provided the following responses:

- 1) The Tenants confirmed they did not pay \$1800.00 for May or June 2010 rent. They argued that they paid the Landlords \$800.00 cash for May however they did not know the date this payment was made. They argued that their tenancy ended as a result of being issued a 10 Day Notice to End Tenancy and therefore they should not be required to pay rent for June 2010. They claim they had possession of their new rental unit as of June 1, 2010 and should not have to pay rent on two units. They confirmed the Landlords helped them move some of their possessions on June 14, 2010 and not June 20, 2010 and there was never any mention that the Landlords would be charging them for this time.

- 2) The Tenants state they did not enter into a verbal agreement with the Landlords to put oil in the oil tank. They argued that the furnace never worked during their tenancy and they only used oil to heat the water.
- 3) The Tenants confirmed the utilities were to be put in the female Tenant's name and were not included in the tenancy agreement. They argued that they knew nothing about having to pay for water until they received a past due bill in the mail. They suspect the Landlords had the water bill changed into the female Tenant's name.

The hearing time came to an end prior to the completion of the testimony.

Analysis

The hearing time expired prior to the submission of all of the evidence and testimony, therefore this matter is adjourned to a later date and the Notice of Adjourned Hearing is enclosed with this Interim Decision. The parties were advised that no additional evidence will be accepted for this application and the future hearing will continue on the merits of this application.

Conclusion

This hearing is adjourned to the date specified in the enclosed Notice of Adjourned Hearing.

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: August 25, 2010.

Dispute Resolution Officer