

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she hand delivered the application for dispute resolution to the social worker at the hospital who was acting as the tenants' representative while the tenants were hospitalized. The tenant's son who has power of attorney for his father said that the landlord's application for dispute resolution was received. I am satisfied that the landlord served the landlord's application to the tenants and that the tenants received this application.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and damage to the rental unit? Is the landlord entitled to retain all or a portion of the security deposit in partial satisfaction of the monetary order requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlords testified that this month-to-month tenancy commenced on April 1, 2002. By 2010, the tenants were paying \$1,300.00 in rent each month. The landlords testified that they continued to hold the tenants' \$600.00 security deposit plus interest paid on March 23, 2002.

The parties agreed that the tenants were hospitalized in May 2010. The female tenant passed away on May 17, 2010. The male tenant's power of attorney testified that the tenants vacated the property on or about May 20, 2010.

The landlords testified that the tenants caused major damage to the rental premises during their tenancy. They said that health officers and police officers prevented the landlord from accessing the rental premises. They said that the police seized the dog on the premises and relocated it to a shelter. The landlords said that they tried to contact the male tenant's power of attorney, to no avail. They provided undisputed testimony that the tenant's power of attorney who attended this hearing met with them on the site and agreed that new carpet was necessary and that cleaning was required. They also provided undisputed testimony that the tenants' dog caused damage to the rental premises. They submitted photographic evidence attesting to the serious extent of the damage caused during this tenancy.

The landlords testified that they have now received all outstanding rent and utilities for the rental premises from the male tenant's power of attorney, including rent for May 2010. They said the premises could not be rented for a one-month period after this tenancy ended because of the extensive repairs required. They said that the new tenants who leased these premises for June 1, 2010 could not obtain occupancy until July 1, 2010. They testified that they did not receive rent from the new tenants until the premises were ready for occupancy by July 1, 2010.

The tenant's power of attorney said that the landlord did not conduct a move-in condition inspection when his parents moved into the rental premises in 2002. He testified that these forms were available from the Residential Tenancy Branch at that time. The landlords said that these forms were not available in 2002. In the absence of a signed move-in condition inspection report, the tenant said that there is no way of determining the condition of the premises when this tenancy began. He said that his

father told him that there have been water leaks and a rat problem in this rental unit since the time he moved into this unit in 2002.

The tenant also testified that the landlord took the photographs submitted into evidence without giving the tenants 24 hour notices of their inspections. Although he agreed that the photographs accurately represented the condition of the rental premises at the end of the tenancy, he asked that this photographic evidence be disregarded due to the landlord's taking of these photographs without the tenant's permission.

The landlords confirmed that they did not give a 24 hour notice before they took the photographs. They said that some of these photographs were taken in the company of the police who attended the rental premises at the end of this tenancy. They also said that they had periodic access to the property during the tenancy to check the health of the tenants. They testified that there were unusual circumstances at the end of this tenancy when both tenants were hospitalized and the landlord could not obtain responses from the tenants' children.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the landlord's undisputed evidence that the rental premises required extensive repairs following the end of this tenancy. The tenant's representative accepted that some of this damage was undoubtedly caused by the tenants' dog. However, he submitted that move-in condition inspection reports were required at the time of the

commencement of this tenancy and that the landlord's failure to complete a joint inspection report barred the landlord from claiming many of the damages requested.

Although it was good practice to conduct joint move-in condition inspection reports when this tenancy commenced in 2002, no prescribed form required the preparation of these reports. The tenant's representative provided no corroborating evidence to support his assertion that the repair items listed in the landlord's application for a monetary order were problems that were present when the tenants moved into these premises. He did not enter into evidence any letters to the landlords to substantiate his allegation that these problems pre-dated this tenancy.

The tenant's power of attorney testified that the photographs entered into evidence provided an accurate assessment of the condition of the rental premises at the end of this tenancy. As the issue before me is the landlord's application for a monetary Order for extensive damage and loss, I am satisfied that extensive repairs were required to restore the premises to a condition whereby they could be rented to another tenant.

I accept the landlord's undisputed evidence and testimony regarding the damage, repairs and losses that the landlords have suffered to the rental premises. I grant a monetary Order to the landlords as set out below for their requested expenses with the following exceptions.

Table 1 of Residential Tenancy Policy Guideline #37 provides a general guide to the useful life of work done or a thing purchased. The estimated life of carpets is established at 10 years in this guideline. The landlords replaced the tenant's carpets 8 years and 2 months after the tenants moved into the rental premises. Based on this evidence, I find that the landlord is entitled to the replacement cost of the remaining 10 year life of these carpets. I grant a monetary award to the landlords for 18.33 % of their costs of replacing the carpets (i.e., 1 year and 10 months of the 10 year life of the carpet or $1.833/10$). As set out below, this results in a monetary award of \$760.57 for carpet replacement.

I deny the landlord's claim for sweeping and power washing the sidewalks and porches as I consider these to be routine maintenance required by the landlord.

In partial satisfaction of this monetary award, I allow the landlords to retain the security deposit plus interest applicable since March 23, 2002. As the landlords have been successful in this application, I allow them to recover their \$100.00 filing fee.

Conclusion

I grant a monetary Order in the following terms.

Item	Amount
Carpet Replacement (\$4,149.32 x 18.33 % = \$760.57)	\$760.57
Cleaning of Remaining Carpets	193.82
Replacement of bathroom acrylic covers	50.00
Yard Cleanup 6 hours @ \$10.00 per hour	60.00
Degrease kitchen and dining area	240.00
Wood – 1 ½ cords of wood @ \$200 per cord	300.00
Urinal Blocks	12.22
Casual Labourer MR	500.00
Labourer- JB- removal of floors	240.00
Loss of Rental for June 2010	1,300.00
Less Credit for Fridge and Stove	-400.00
Less Security Deposit (\$600.00 + \$21.25)	-621.25
Recovery of Filing Fee for this application	100.00
Total Monetary Order	\$2,735.36

This monetary Order allows the landlord to retain the tenants' security deposit plus interest and to recover the filing fee for their application.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.