

DECISION

Dispute Codes MNDC O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and other reasons to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was sent via mail on May 7, 2010. The Landlord confirmed receipt of the hearing package.

The Landlord and both 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 Tenants entitled to a Monetary Order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the fixed term tenancy agreement was effective on January 1, 2010 and ended June 30, 2010. Rent was payable on the first of each month in the amount of \$1,250.00 and the Tenants paid a security deposit of \$625.00 on December 15, 2009. A move-in inspection report was completed on January 10, 2010, and a move-out inspection report was completed June 30, 2010.

The Tenants provided documentary evidence which included among other things, letters to the Landlord dated February 25, 2010, April 6, 2010, May 6, 2010, photos of the rental unit, and a chronological listing of events.

The Tenants testified that they entered into the tenancy agreement while they were residing in another province. They made arrangements to occupy the rental unit when they arrived January 8, 2010. They were given the keys to the rental unit only to find out the main breaker had been shut off and were told that they could not have power until after the weekend on Monday January 11, 2010. They left and had to incur costs for temporary accommodations for the three days even though they had paid the full rent for the month of January 2010.

The Tenants stated that they had constant communication with the property and resident managers regarding maintenance deficiencies almost from the onset of their tenancy. They decided to put their concerns in writing on February 25, 2010, as their requests for repairs were not being attended. The managers made no attempt to get the carpets cleaned after the Tenants' requests. The Landlords did not respond fully to their February 25, 2010 written requests so they sent another written request on April 6, 2010 requesting a mutual agreement to end the fixed term tenancy early however the Landlords refused. Afterwards the Tenants issued their one month notice to end the tenancy effective the end of the fixed term period and vacated the rental unit.

The Landlord testified and argued that they handled the situation as properly as they could. The unit was viewed by the Tenants' friend prior to the tenancy and she told them that it looked clean. They called a roofing contractor to attend to the roof and they even offered the Tenants the opportunity to move into a vacant suite that was available on the same floor but they refused. With respect to the carpet cleaning the Landlord argued the carpets were cleaned after the previous tenant vacated the unit at the end of June 2009. The Landlord could not provide testimony on who actually cleaned the carpets, he suspects it was his contractor, and he could not confirm the date the carpets were allegedly cleaned.

The Tenants confirmed that on approximately February 27 or 28th, 2010, the resident manager offered them a vacant suite to move into. They declined this offer to move because they did not like the layout of the other unit, they could not afford the costs to relocate, the stress or the labour involved in moving again. They confirmed that their friend viewed the rental unit prior to their entering into the lease; however the power was not turned on at that time so she was not able to clearly see how dirty the carpet was.

The Landlord confirmed he did not submit evidence prior to the hearing and faxed a copy of the move-in / move-out inspection report and the security deposit refund forms which were completed and signed with the Tenants. He argued that the tenancy agreement stipulates that the Tenants must have the carpets professionally cleaned at the end of the tenancy. The Tenants signed the agreement allowing the Landlords to withhold \$55.00 for carpet cleaning and that they should have been sent a refund in the amount of \$570.00 for their security deposit not \$595.00. He stated his head office made an error in refunding \$595.00 based on his records.

The Tenants confirmed they had received copies of the inspection and security deposit forms, they received \$595.00 as a security deposit refund and they did sign the forms which list the deduction of \$55.00 to their security deposit. They argued that they did not agree to the deduction and that the resident manager told them that they had no choice but to sign and agree so their head office would refund the balance of the deposit. They are seeking monetary compensation of \$1,063.00 which is comprised of \$938.00 in rent abatement for unusable space, poor living conditions and labour to clean up mess during the period of the water leaks; plus \$50.00 filing fee; plus \$75.00 exemption from paying for carpet cleaning.

The Landlord argued the Tenants were only charged \$55.00 for carpet cleaning and not \$75.00 as claimed above.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the Landlords did not have the rental unit ready for the Tenants upon their arrival on January 8, 2010, in contravention of the tenancy agreement which stipulates the tenancy began on January 1, 2010. In addition, there is evidence that the Tenants requested the Landlords to repair and maintain the rental unit as required under section 32 of the Act and after a period of delay the Landlords made some attempts to remedy the situation. The Landlords did offer the Tenants another rental unit; however I find this offer would not have mitigated the Tenants loss as there was no offer of financial compensation from the Landlord to cover such costs as moving the furniture and transfer of utilities. I find that the Landlords failed to attend to the maintenance issues in a timely fashion which caused the Tenants to suffer a loss to the quiet enjoyment of the rental unit as provided under section 28 of the Act. Based on the

aforementioned I find the Tenants have proven the test for damage or loss, as listed above, and I hereby approve their request for monetary compensation in the amount of \$938.00.

With respect to their claim of \$75.00 for reimbursement of carpet cleaning I find the Tenants have failed to provide sufficient evidence that the carpets were not cleaned at the onset of the tenancy and that they incurred a loss of \$75.00. Therefore I dismiss the Tenants' request for \$75.00.

The Tenants have been primarily successful with their application and I hereby award recovery of the \$50.00 filing fee.

Conclusion

I HEREBY FIND in favor of the Tenants' monetary claim. A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$985.00**. The order must be served on the respondent Landlord and is enforceable through the Provincial Court as an order 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*.

Dated: September 17, 2010.

Dispute Resolution Officer