

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord 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.

Service of the hearing documents, by the Landlords to the Tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on June 16, 2010. The Tenants confirmed receipt of the hearing package.

The Landlords and 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 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the month to month tenancy began on July 1, 2007 and ended on May 31, 2010, after the Tenants were issued a notice to end tenancy for unpaid rent. Rent was payable on the first of each month in the amount of \$1,150.00 and a security deposit was paid July 1, 2007 in the amount of \$575.00. A move-in inspection report was completed and signed by both parties on June 16, 2007.

The Landlords testified they purchased the rental unit in 2005. The unit is a three bedroom rancher house that was built in approximately 1975. The house has been occupied by renters since they purchased it. The Landlords referred to their documentary evidence in support of their testimony which included among other things copies of invoices for materials purchased or disposed of, photos of the rental unit taken May 31, 2010, a detailed list of their claim, a copy of the tenancy agreement, a copy of the notice to end tenancy, and a copy of the move-in inspection report. The Landlords are seeking a monetary order of \$4,996.41 for the following:

- 1) Unpaid rent \$2,300.00. The Tenants occupied the rental unit until May 31, 2010, however did not pay rent for April or May 2010. A 10 Day Notice to End Tenancy was issued and posted to the Tenants' door on May 28, 2010.
- 2) Disposal of tires and waste \$142.61. The Landlords provided receipts from two locations dated June 13, 15, 17, and 20, 2010 for the disposal of waste left at the rental unit.
- 3) Mileage \$21.25. The Landlords are seeking reimbursement for mileage charges to transport the waste materials. The Landlords did not have an accurate accounting of how many miles were travelled and stated that he based his calculation on about 55 cents per kilometre.
- 4) Time charges for labour to remove waste \$204.00. The Landlords are seeking reimbursement for 12 hours at \$17.00 per hour for labour to remove the waste. The Landlords did not have a detailed list of which dates they had accumulated these hours but argued that they were at the rental unit on the dates they disposed of the products June 13, 15, 17, and 20, 2010.
- 5) Replacement of Doors \$416.41. The Landlords provided receipts for three bedroom doors, two closet doors, new handles and hardware, plus a new patio door handle. They argued that all of the doors and the patio handle were broken beyond repair during this tenancy. The doors, hardware, and patio door handle were present at the time they purchased the house and appeared to be original.
- 6) Damage to Kitchen Cupboard Doors \$80.00. The Landlords provided photos of the two kitchen cupboard doors that have damage. The doors have not been

repaired or replaced and the amount claimed is an estimated cost of the damage. The cupboards are original to the house.

- 7) Replacement fireplace glass \$172.48. The Landlords provided a photo of the broken glass to the gas fireplace and a receipt for the replacement glass. The gas fireplace was in good working order at the onset of the tenancy and is original to the house.
- 8) Patching of walls \$10.00. The Landlords are seeking \$10.00 to cover their costs of supplying the mud and screens to patch the holes that were left in the walls during the tenancy.
- 9) Cost of Paint \$89.14. The Landlords provided receipts to support that they purchased paint to paint the entire interior of the rental unit including the base boards. The female Landlord argued they had painted the entire rental unit at the beginning of the tenancy however did not provide evidence to support this.
- 10) Cost of travel \$251.56. The Landlords advised that they do not live in the same city as where the rental unit is located so they are seeking mileage costs to travel from their location to the rental unit.
- 11) Time charges for labour \$650.00. The Landlords are seeking labour charges for time spent to clean up and repair the rental unit. They did not have a detailed list of the dates or times spent cleaning and repairing the rental unit other than June 12 and June 13, 2010 where two or three people attended the rental unit for up to seven hours to perform the work. They adjusted their labour costs to ensure their claim was under \$5,000.00 so they would not have to pay a higher filing fee.
- 12) Additional costs incurred \$658.96. The Landlords provided receipts for the following miscellaneous items that they purchased to repair or clean up miscellaneous items at the rental unit. They argued that the Tenants broke the fence and a fence panel, left the unit with fleas, oil stains on the floor and walls in the shed, broke the gutters and drains, broke the brackets for the mini blinds, removed the strainers or water stops from every sink and tub, plus the costs to develop photos, mail documents, file their claim, and replace one carpet.

The Tenants provided testimony, confirmed they did not pay rent for April or May 2010, and argued that several of the Landlord's photos were taken prior to the male Tenant vacating the rental unit. The female Tenant vacated the unit in February 2010 however the male Tenant did not enter into a new tenancy agreement with the Landlords. They argued that the rental unit yard / shed area were littered with waste left behind from the previous tenant. They stated that the previous tenant did a midnight move, leaving without notice to the Landlords, and that it was the female Tenant who called the Landlords to inform them the unit was vacant and to request to become the new tenant. They argued that the Landlords did not paint the rental unit prior to them occupying it and in fact they were given the opportunity to paint a few rooms prior to moving in.

The male Tenant reviewed the Landlord's photos and acknowledged the items that he left behind at the rental unit. While he agreed he left the unit dirty with some damage it was not to the extent of the Landlords' claims. The drain pipes and gutters were in the same condition as when they occupied the unit and the photos even show the missing pieces are present, just not screwed together. The fence did break during the tenancy however it was the original fence that blew down in a wind storm. The Tenant attempted to repair the fence and hung wires to hold the fence panel in place because the Landlords chose not to repair it during their tenancy. The carpet the Landlords replaced was very dirty at the onset, as noted on their move-in inspection report.

The Tenants do not feel they are responsible for the costs to repair the base board heaters as they never worked properly for them and the Landlords continued to ignore their requests to have them repaired. They agreed that they are responsible for some of the damage however they do not believe they are responsible for everything being claimed.

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 Tenants failed to pay rent for April and May 2010 in violation of section 26 of the Act that states a tenant must pay rent when it is due under the tenancy agreement. Based on the aforementioned I find the Landlords have proven their claim for \$2,300.00. (2 x \$1,150.00)

Section 32 of the Act provides that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

I am required to consider the evidence and testimony not on the basis of whether it “carried the conviction of the truth”, but rather to assess the evidence against its consistency with the probabilities that surround the preponderance of the conditions before me. With the presence of opposing testimony relating to the condition of the exterior of the rental unit at the onset of the tenancy, I considered that the photos which were taken prior to the completion of the move out, that there was no inspection report completed for the exterior of the rental unit or at the end of the tenancy, what information is contained in the move-in inspection report, and that the Tenants acknowledged what they left behind. Therefore I find, in accordance with section 62 of the Act that the Tenants were responsible for only 75% of the items or debris left at the rental unit at the end of the tenancy.

Based on the above I hereby approve the Landlords' claims as follows:

- \$106.96 for disposal of debris (75% of \$142.61)
- \$15.94 use of vehicle or mileage to remove debris (75% of \$21.25)
- \$153.00 for labour costs to remove debris (75% of \$204.00)
- Nil for door interior doors, closet doors, hardware and patio door handle. All of these items were approximately 35 years old and had far exceeded their useful life of 20 years. Therefore their depreciated value or restorative value is zero. I also note there are indications on the move-in inspection report of the presence of damage to some of these items at the onset of the tenancy.
- Nil for Kitchen cabinet repairs. While these cabinets are damaged they are approximately 35 years old and have exceeded their useful life of 25 years. Also, there is no evidence to support the actual cost required to compensate for the damage as the repairs have not been completed.
- \$172.48 for glass replacement on fireplace. The evidence supports the fireplace glass was broken during the tenancy and therefore in accordance with Section 32 the Tenants are required to pay to replace it.
- \$10.00 for materials used to patch the damage caused to the walls during the tenancy in accordance with section 32.

- \$30.84 for the cost of paint. While there is no evidence to support when the rental unit was last painted there is evidence of holes in walls which required mudding and painting. Therefore I approve the cost of one gallon of paint in accordance with section 32 of the Act.
- Nil for the costs incurred to travel from the Landlord's residence to the city where the rental unit is located. There is no provision under the Act that provides a tenant must suffer costs because the landlord chooses to reside in a different city.
- \$127.50 for labour costs to clean and repair the rental unit. The Landlords were able to provide testimony that the clean up involved three people on June 12 and June 13, 2010 up to seven hours each for a total of twenty one hours. The Landlords claimed additional time however were not able to provide sufficient evidence to support the dates or times the additional work was performed. There is also the question of how much time was spent cleaning waste or damage caused by the previous tenant. The dates substantiated for this labour claim are the same dates the Landlords have been awarded eleven hours above for the removal of debris. Therefore this amount is based on 10 hours (21 hours – 11 hours paid above for debris removal) at 75% x \$17.00 per hour.
- Nil for additional costs incurred. For items pertaining to the fence, gutters, drain spouts, wood for fence, brackets for mini blinds, shed repairs, equipment to clean shed, electrical parts for base board heater, shed stain cover, and flea killer, I find there is insufficient evidence to prove the age of these items or that the damage resulted during the tenancy and were not in fact a result of lack of prior maintenance. With respect to claims for costs incurred to file this application, such as pictures and mail costs, the dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Therefore, I find that the landlord may not claim such costs, as they are costs which are not denominated, or named, by the *Residential Tenancy Act*.

The Landlords have been partially successful with their claim, therefore I award recovery of the \$50.00 filing fee.

All amounts that have not been awarded as claimed are dismissed without leave to reapply.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit as follows:

Unpaid rent April and May 2010 (2 x \$1,150.00)	\$2,300.00
Debris removal	106.96
Travel or mileage costs to remove debris	15.94
Labour costs to remove debris	153.00
Fireplace glass replacement	172.48
Costs to screen, mud, and sand holes in walls	10.00
Cost of paint	30.84
Labour costs to clean rental unit	127.50
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlords)	\$2,966.72
Less Security Deposit of \$575.00 plus interest of \$13.04	-588.04
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORDS	\$2,378.68

Conclusion

I HEREBY FIND in favor of the Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$2,378.68**. The order must be served on the respondent Tenants 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 20, 2010.

Dispute Resolution Officer