

DECISION

Dispute Codes MNDC MNSD MNR MND FF

Introduction

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

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on May 13, 2010, to the forwarding address provided by the Tenant on April 30, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on May 18, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy agreement was effective May 1, 2009 and was set to switch over to a month to month tenancy after April 30, 2010. Rent was payable on the first of each month in the amount of \$1,250.00 and the Tenant paid a security deposit of \$625.00 on April 5, 2009. On March 25, 2009, the Tenant provided the Landlord written

notice to end the tenancy effective April 30, 2010. A move-in inspection report was completed May 1, 2009 and a move-out inspection report was completed and signed by both parties on April 30, 2010. The Tenant signed the move-out report indicating that he does not agree with the report.

The Landlord is seeking monetary compensation in the amount of \$2,599.60 which is comprised of the following:

- 1) Unpaid rent for April 2010 of \$1,250.00. The Tenant's rent cheque was returned NSF.
- 2) NSF fees charged to the Tenant on April 19, 2010, in the amount of \$39.00. The Landlord confirmed that NSF fees are provided in their tenancy addendum in # 11.
- 3) Cleaning charges of \$150.00. The Landlord was required to hire a cleaning company to clean the unit as the Tenant failed to complete any of the cleaning at the end of the tenancy. The Landlord provided a receipt which indicates the unit was cleaned on May 5, 2010.
- 4) Repairs to the rental unit which involved mudding, sanding, and painting the walls in the amount of \$278.50. The Landlord provided a receipt dated May 7, 2010 to support the work was completed and confirmed the repairs were conducted on walls in the living room and bedroom. He stated the unit had to be repaired as it was up for sale and sold shortly after the end of the tenancy.
- 5) The Landlord is seeking \$300.00 as reimbursement for Strata fines charged to the Tenant and paid by the Landlord. The Landlord provided copies of warning letters issued to the Tenant which state they "may be issued fines" as well as a copy of an invoice generated by the Landlord to the Tenant dated January 16, 2010. The Landlord confirmed that they did not provide copies of the fines issued by the Strata or proof of payment of the fines.
- 6) \$25.00 charged by the Strata management company to clean and remove garbage from the Tenant's parking spot as supported by the Strata charge request dated December 26, 2009. Costs to repair and clean all of the windows

blinds in the amount of \$107.10 as supported by the invoice from the blind service company dated March 5, 2010.

- 8) The Landlord is seeking \$400.00 to reimburse for the damage caused to the stainless steel freezer door on the refrigerator. The Landlord provided photos in support of this claim which display several dents in the door. He argued that the owner of the property was required to pay the new owner \$600.00 for the damage fridge as this was a condition of the sale agreement. The Landlord could not provide proof that \$600.00 was actually paid as it was paid by the owner's personal cheque. When asked if the door had been repaired the Landlord advised the payment was part of the agreement for sale and could not provide testimony as to when the door had been repaired or replaced however he thought it had been replaced.
- 9) The Landlord is seeking reimbursement of the \$50.00 filing fee.

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

Section 26 of the Act provides that a tenant must pay rent when rent is due under the tenancy agreement. The evidence supports the Tenant's April 2010 payment was returned NSF and the amount due remains unpaid. Therefore I find the Landlord has proven the test for damage as listed above and I approve their claim of \$1,250.00

Section 7 of the Regulations; stipulate that a Landlord may charge a tenant a non-refundable fee for bank charges if the fee is provided for in the tenancy agreement. Section 11 of the tenancy agreement addendum provides for a \$25.00 service charge "in addition to bank charges that Landlord is being charged by financial institution" to be charged to the Tenant for a NSF fee. The Landlord has sought \$39.00 in NSF fees however there is no evidence to support that the Landlord was charged fees from their financial institution over and above \$25.00. Therefore I find the Landlord has provided sufficient evidence to support a \$25.00 claim the amount listed in the tenancy agreement addendum and allowed under Section 7 of the regulations.

The move-out inspection form confirms that the Tenant left the rental unit in a state that required additional cleaning in violation of section 37 of the Act which provides that at the end of the tenancy the tenant must leave the rental unit reasonably clean, and undamaged. The evidence supports the Landlord suffered a loss of \$150.00 to have the unit cleaned. Therefore I approve the Landlord's claim for cleaning.

The move-in inspection report supports that at the onset of the tenancy there were gouges present in the walls and that several rooms smelled of smoke. There was no evidence to support when this unit was previously painted. The move-out inspection report indicates the same gouges in the walls and additional wear and tear that had accumulated during the tenancy. The testimony indicated the unit was for sale and in

need of painting in order to show properly for prospective buyers. In the absence of supporting evidence of when this unit was last painted with the supporting evidence which indicates there was damage at the onset of the tenancy, I find the Landlord has failed to provide sufficient evidence that this rental unit required patching and painting as the sole result of the Tenant's actions or neglect. Therefore I dismiss the Landlord's claim of \$278.50 to repair and paint the rental unit.

In support of their claim for \$300.00 of Strata fines the Landlord submitted a copy of an invoice generated by the Landlord to the Tenant. I note that there were several copies of letters issued by the Strata to the Tenant and owner of the property however all of these letters only "warn" of fines being imposed. There is no evidence before me to support that fines were issued by the Strata or when and if they were actually paid. Therefore I find there is insufficient evidence to support the Landlord's claim of \$300.00 for Strata fines.

The Landlord is seeking \$25.00 to recover the cost charged by the Strata to clean the oil stain in the Tenant's parking stall. The evidence supports there was a \$25.00 chargeback from the Strata issued December 26, 2009 to clean the parking stall in question. Section 32 of the Act provides that a Tenant is responsible to repair and maintain damage caused to the rental property during the tenancy therefore I find the Landlord has proven the test for damage or loss listed above and I approve their claim of \$25.00.

The photos and move-out inspection report supports there was damage caused to the freezer door on the stainless steel refrigerator. The Landlord is seeking \$400.00 as compensation for this refrigerator damage however there is no evidence before me to support the actual amount the Landlord suffered for this loss. The Landlord relied solely on his testimony that the owner was required to pay \$600.00 as a condition of the sale of the rental unit and that this amount was to compensate for the damaged refrigerator. In the absence of documents to support the amount of loss suffered and the date the loss was incurred by the Landlord specific to the refrigerator I find the Landlord has

failed to prove all requirements of the test for damage or loss listed above and I hereby dismiss their claim of \$400.00.

The Landlord has primarily been successful with their application; therefore I award recovery of the filing fee.

Monetary Order – I find that the Landlord is 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 Tenant's security deposit and interest as follows:

Unpaid Rent for April 2010	\$1,250.00
NSF Fees	25.00
Cleaning the rental unit	150.00
Parking stall clean up	25.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$1,500.00
Less Security Deposit of \$625.00 plus interest of \$0.00	- 625.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$ 875.00

All amounts claimed for by the Landlord and not allowed are hereby dismissed without leave to reapply.

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$875.00**. The order must be served on the respondent Tenant 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 27, 2010.

Dispute Resolution Officer