



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MND, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords to obtain a Monetary Order for unpaid rent, and for damage to the rental unit, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, given to the tenants in person on June 08, 2010 at the tenants' place of work. The landlord attending gave affirmed testimony that service took place as declared.

The male landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to a Monetary Order for damages?
- Are the landlords entitled to keep the security deposit?

Background and Evidence

The landlord attending testifies that this month to month tenancy started on January 01, 2010 and ended on April 30, 2010. Rent for this unit was \$700.00 per month and was due on the 1st day of each month. The tenants paid a security deposit of \$350.00 on December 01, 2009.

The landlord testifies that the tenants did not give the correct amount of written notice to end the tenancy. He has provided a letter from the tenants dated April 15, 2010 which gives notice to



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end the tenancy on April 30, 2010. The landlord states he was unable to re-rent the unit despite advertising it in the local newspapers until June 17, 2010. The landlord seeks to recover the sum of \$700.00 for rent for May, 2010.

The landlord testifies that at the end of the tenancy the tenants did not contact him to arrange a move out condition inspection. When he arrived at the rental unit he found the tenants had already vacated and had left the keys in the unit. No forwarding address was given to the landlord. The landlord states he did a visual move in inspection with the tenants at the start of their tenancy.

The landlord testifies that when he entered the unit he found the tenants had damaged two roller blinds and he seeks to recover the cost of these at \$150.00. He states the tenants had not cleaned the carpets despite having a pet dog and these were cleaned at a cost of \$105.00 (receipt provided in evidence). He claims the tenants left the shower curtain very dirty with the hooks pulled off. This was replaced at a sum of \$30.00. The landlord claims the tenants did not clean the rental unit and he had to clean the stove, sinks and tub and seeks to recover his costs for this of \$60.00.

The landlord testifies at the start of the tenancy he measured the furnace oil in the tank with the tenant and it was agreed it was approximately half full and would cost \$500.00 to replace. He claims it was the tenant's responsibility as noted on the tenancy agreement that the cost of oil was not part of their tenancy and they should therefore replace any oil used or reimburse the landlord for this cost. The landlord states the tank was empty at the end of the tenancy and seeks to recover the sum of \$500.00.

The landlord also seeks to keep the tenants security deposit in partial payment of the rent owed and to recover his filing fee for his application.

Analysis

The tenants did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have

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carefully considered the landlords documentary evidence, and his affirmed evidence. With regards to the landlords claim for unpaid rent; section 45 of the *Act* states, a tenant of a month-to-month tenancy must give one clear months notice to end the tenancy. As the tenants only gave written notice to the landlord on April 15, 2010 and ended the tenancy on April 30, 2010 I find they contravened s. 45 of the *Act*. The earliest the tenants could not have legally ended the tenancy was May 31, 2010; consequently I find that the landlords are entitled to recover unpaid rent for May 2010 in the amount of **\$700.00** pursuant to section 67 of the *Act*.

With regard to damage to the rental unit; I have applied a test used for damage or loss claims to determine if the claimant has meet the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

In this case I find the landlord has provided insufficient evidence to show the tenants caused damage to the blinds or shower curtain. The landlord did not conduct a move in or move out condition inspection report in accordance with the Regulations. A condition inspection report is intended to serve as some objective evidence of whether the tenants are responsible for

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damages to the rental unit during the tenancy. In the absence of this report I find I must dismiss the landlord's application for damage to the blinds and shower curtain.

With regard to the carpet cleaning; the Residential Tenancy Policy Guidelines #1 states: tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of the tenancy, if the tenant has had pets which were not caged. Consequently as the tenants had a dog I find they are responsible for cleaning the carpets at the end of the tenancy and uphold this section of the landlords claim for \$105.00 pursuant to section 67 of the *Act*.

I further accept the landlords' testimony that he had to clean the stove, sink and tub after the tenants had moved out and find the sum he has claimed to be a reasonable amount for this work. Therefore, I award the landlord his **\$60.00** costs for this cleaning pursuant to section 67 of the *Act*.

With regard to the landlords claim for the cost of replacement oil; the tenants have not appeared at the hearing to dispute the landlord's evidence regarding the use of the oil. The tenancy agreement clearly states that heating costs are not included in the rent. Consequently, I find the landlord is entitled to recover the sum of **\$500.00** to refill the oil for the furnace pursuant to section 67 of the *Act*.

With regards to the landlords claim to keep the tenants security deposit; Sections 35(3) and 35(5) of the Act require a landlord to complete a condition inspection report at the end of a tenancy and to provide a copy of it to the tenant even if the tenant refuses to participate in the inspection or to sign the condition inspection report. In failing to complete the condition inspection report when the tenants moved out, I find the landlord contravened s. 35(3) of the Act. Consequently, s. 36(2)(c) of the Act says that the landlord's right to claim against the security deposit for damages is extinguished.

I find however, that sections 38(4), 62 and 72 of the Act when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlord to



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keep **\$350.00** of the tenants' security deposit to compensate him for the damages and unpaid rent.

As the landlord has been partially successful with his claim I find he is entitled to recover the **\$50.00** filing fee from the tenant's pursuant section 72(1) of the *Act*. A Monetary Order has been issued to the landlords for the following amount:

Unpaid rent for May, 2010	\$700.00
Cleaning unit	\$60.00
Oil used by tenants	\$500.00
Subtotal	\$1,365.00
Filing fee	\$50.00
Less security deposit	(-\$350.00)
Total amount due to the landlord	\$1,065.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,065.00**. The order must be served on the respondent 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: October 20, 2010.

Dispute Resolution Officer