

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

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

- a monetary order for unpaid rent and utilities, 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 tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover his 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 male landlord (the landlord) testified that he handed a 10 Day Notice to End Tenancy for Unpaid Rent to the tenants on May 4, 2010. The landlord testified that he handed the tenants a copy of his application for dispute resolution on June 16, 2010. The tenants confirmed having received these documents. I am satisfied that the landlords served the tenants with these documents in accordance with the *Act*.

At the commencement of the hearing, I asked the tenants to clarify a portion of the evidence they had submitted. They confirmed that they were asking for their own monetary award from the landlord in the amount of \$2,294.00. Since the tenants had made no application for dispute resolution regarding their own claim for a monetary award, I refused to consider their request for a monetary award. I limited my consideration of this matter to the landlords' application for a monetary Order in the amount of \$5,000.00 plus recovery of the landlords' filing fee for this application.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent or utilities or damage or loss incurred during this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit? Are the landlords entitled to recover their filing fees for this application from the tenants?

Background and Evidence

This fixed term tenancy commenced on May 8, 2009. It was scheduled to expire on May 1, 2010 and was extended on a month-to-month basis beyond that date. Monthly rent was set at \$1,250.00, payable on the first of each month. The tenants were to pay 75% of the hydro and gas for this property. A copy of the April 25, 2009 joint move-in condition inspection report was entered into evidence by the tenants. The landlords continue to hold the tenants' \$625.00 security deposit paid on May 6, 2009.

The parties agreed that on April 26, 2010, the tenants provided written notice of their decision to end this tenancy and to vacate the rental premises on May 31, 2010. The landlord testified that the tenants paid all of the outstanding rent requested in the May 4, 2010 notice to end tenancy and that they owed no outstanding rent for May 2010 or any previous months. The parties agreed that the tenants did not pay any rent for June 2010. They vacated the rental premises on June 12, 2010. The landlord requested a monetary award for unpaid rent for June 2010, and for damage to the premises and cleaning required when the tenants left.

Analysis

Section 7 of the Residential Tenancy Policy Guideline #17 reads as follows:

*The right of a landlord to obtain the tenant's consent to retain or file a claim against a security deposit for damage to the rental unit is extinguished if:*

- *the landlord does not offer the tenant at least two opportunities for inspection as required by the Act, and/or*

- *having made an inspection does not complete the condition inspection report, in the form required by the Regulation, or provide the tenant with a copy of it...*

The landlord gave undisputed oral testimony that the tenants did not leave a forwarding address and vacated the rental premises without saying when they were going to do so. He said that they did not leave him the key, but placed it in the mailbox of the unit.

Under these circumstances, section 9 of Guideline #17 allows the landlord to retain the following rights:

- *to file a claim against the deposit for any monies owing for other than damage to the rental unit;...*
- *to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit...*

This residential tenancy agreement stated that the tenancy continues until the landlords or the tenants give proper notice to terminate. Between April 26, 2010 and May 4, 2010, both parties gave written notice to end this tenancy. Since the landlords accepted the tenants' rent payment for May 2010, the landlords' 10 Day Notice to End Tenancy did not terminate this tenancy. In accordance with the tenants' written notice of April 26, 2010, this tenancy was to terminate on May 31, 2010. The tenants' failed to vacate the premises by that date, and did not vacate the rental premises until June 12, 2010. They paid the landlords no rent for June 2010, asking that the landlords apply their security deposit to the first twelve days of June. The landlords testified that cleaning and repairs were required when the tenants vacated the premises. I accept that it would have been difficult for the landlords to obtain a new tenant for the rental premises for the remainder of June 2010. As such, I grant the landlords a monetary award of \$1,250.00 for unpaid and lost rent for the rental premises during that month.

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.

The landlords did not conduct a move-out inspection, nor did they prepare a move-out condition inspection report. Although they said that they had some photographs of the condition of the rental premises after the tenants vacated the premises, they did not enter these into evidence. The landlords provided no receipts to document any of their claim for a monetary award arising out of this tenancy. The landlord could not provide details on how he arrived at the \$5,000.00 amount requested in the application for dispute resolution. Under these circumstances, the landlords have not met the burden of proof required under section 67 of the *Act* for their claim for damage and loss caused by the tenants during the course of this tenancy. I dismiss the landlords' claim for damage or loss resulting from this tenancy.

I allow the landlords to retain the tenants' security deposit plus interest in partial satisfaction of the monetary award resulting from this application. No interest is payable over this period. Since the landlords have been partially successful in their application, I allow them to recover their filing fee for this application from the tenants.

### Conclusion

I grant the landlords a monetary Order in the following terms which allows them to keep the tenants' security deposit and to recover their filing fee for this application from the tenants.

<b>Item</b>	<b>Amount</b>
Landlords' Loss of Rent for June 2010	\$1,250.00
Less Security Deposit	-625.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$675.00</b>

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) 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*.