

## **Decision**

**Dispute Codes:** MNR, MNDC, MNSD, FF

### **Introduction**

This hearing dealt with an application by the landlord for a monetary order as compensation for unpaid rent, compensation for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit, and recovery of the filing fee. Both parties participated and / or were represented in the hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the landlord is entitled to any or all of the above under the Act, regulation or tenancy agreement

### **Background and Evidence**

This is presently the most recent of hearings convened in response to an on-going dispute between these parties. There is no copy of a written tenancy agreement in evidence for what appears to have been a month-to-month tenancy. Monthly rent was \$1,350.00 and the tenants were responsible for paying one half the hydro and gas utilities. At some stage a security deposit of \$675.00 was collected.

In summary, an order of possession was issued in favour of the landlord which required the tenants to “deliver full and peaceable vacant possession and occupation” of the unit by “not later than 1:00 PM on January 31, 2010.” The landlord takes the position that as the tenants had not contacted him and returned the keys by that time and on that date, they had therefore not vacated the unit in compliance with the order of possession. Accordingly, the landlord obtained a writ of possession and engaged the services of a bailiff. The landlord subsequently gained entry to the unit on February 11, 2010, the locks were re-keyed, and certain rubbish and other discarded items left behind by the tenants were then removed.

The tenants' agent claimed that the tenants vacated the unit on January 31, 2010, that doors to the unit were left unlocked, and that the keys were left inside the unit on top of a counter. However, evidence submitted by the tenants supports the proposition that the tenants did not vacate the unit until February 1, 2010; specifically, evidence includes a copy of a receipt for the services of a moving company, and the date of service is shown as February 1, 2010. Evidence submitted by the tenants also includes a copy of the written tenancy agreement entered into with another landlord for a different rental unit, to be effective from February 1, 2010.

### **Analysis**

The specific aspects of the landlord's claim and my findings around each are set out below:

\$50.00: filing fee for hearing convened on April 15, 2010. The subject hearing was reconvened on June 7, 2010. In the decision the dispute resolution officer dismissed the landlord's application to recover the filing fee "without leave to reapply."

Accordingly, as this particular matter has already been decided, this aspect of the application is hereby dismissed.

\$1,350.00: unpaid rent for January 2010. The tenancy ended as a result of the landlord having issued a "2 month notice to end tenancy for landlord's use of property." The effective date of the notice was January 31, 2010. Pursuant to section 51 of the Act which addresses **Tenant's compensation: section 49 notice**, the tenants are entitled to receive "the equivalent of one month's rent payable under the tenancy agreement." As the understanding is that rent was paid in full for December 2009, January 2010 was the final month of tenancy and the month in relation to which the tenants are entitled to the benefits pursuant to section 51. Accordingly, this aspect of the application is hereby dismissed.

\$530.00: rent for the period from February 1 to 11, 2010. Following from the information set out above, I am satisfied that the tenants did not vacate the unit by 1:00

PM on January 31, 2010, as required by the order of possession but, rather, vacated the unit on February 1, 2010. Accordingly, I find that the landlord is entitled to one day's rent for the over-holding of the unit by the tenants by one day. The amount of this entitlement is **\$48.21**, which is calculated as follows:

$$\$1,350.00 \text{ (monthly rent)} \div 28 \text{ (\# days in February 2010)} = \underline{\$48.21} \text{ (per diem)}$$

**\$111.00\***: *fees related to obtaining a writ of possession*. As I have found the tenants did not vacate the unit by the time specified on the order of possession, as set out above, I find the landlord has established entitlement to the full amount of these fees.

**\$919.55**: *fees for the bailiff to enforce the order of possession*. Had the landlord exercised due diligence by undertaking to attempt to schedule a move-out condition inspection with the tenants, or attending the unit in person on or around the end of tenancy, I find that he would have determined that the tenants vacated the unit on February 1, 2010. In that event, presumably the landlord would not have then undertaken to engage the services of a bailiff. In the result, I find that the landlord has not established entitlement to this aspect of the claim and it is hereby dismissed.

**\$110.00\***: *rubbish removal*. Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenants had left rubbish and other discarded items behind in the unit when they vacated on February 1, 2010. Accordingly, I find that the landlord has established entitlement to the full amount claimed for rubbish removal.

**Utilities:**

**(\$335.44)**: full amount of hydro - November 13, 2009 to January 13, 2010)

**\$167.72\***: *tenants' half share*. Based on the documentary evidence and testimony, I find on a balance of probabilities that the landlord has established entitlement to the full amount of the half claimed.

-----

(\$314.99: full amount of hydro – January 14 to February 11, 2010)

\$157.50: *tenants' half share*. As above, I find that the tenants vacated the unit on February 1, 2010. In the result, the period in question is from January 14 to February 1, 2010, and the number of days is therefore 19, not 29. On the basis of a per diem calculation of \$5.43 ( $\$157.50 \div 29$ ), I find that the landlord has established entitlement to **\$103.17\*** ( $\$5.43 \times 19$ ).

-----

(\$458.68: full amount of gas – December 12 to January 13, 2010)

**\$229.34\***: *tenants' half share*. Based on the documentary evidence and testimony, I find on a balance of probabilities that the landlord has established entitlement to the full amount of the half claimed.

-----

(\$280.84: full amount of gas – January 14 to February 11, 2010)

\$140.42: *tenants' half share*. As above, I find that the tenants vacated the unit on February 1, 2010. In the result, the period in question is from January 14 to February 1, 2010, and the number of days is therefore 19, not 29. On the basis of a per diem calculation of \$4.84 ( $\$140.42 \div 29$ ), I find that the landlord has established entitlement to **\$91.06\*** ( $\$4.84 \times 19$ ).

-----

**\$50.00\***: *filing fee for present hearing*. As the landlord has achieved some success with this application, I find he is entitled to recover the full amount of the filing fee.

**Sub-total: \$910.50\***

As for the monetary order, as set out above, I find that the landlord has established a claim of \$910.50. I order that the landlord retain the security deposit of \$675.00, and I

grant the landlord a monetary order under section 67 of the Act for the balance owed of \$235.50 (\$910.50 - \$675.00). In the absence of any evidence pertaining to when the security deposit was collected, I am unable to undertake any calculation of interest.

### **Conclusion**

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$235.50**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: November 26, 2010

---

Dispute Resolution Officer