



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for unpaid rent or utilities; for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenants for the cost of this application.

An agent for the landlord company and one of the tenants attended the conference call hearing. The parties gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. All information and verbal testimony has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to a monetary order for damage to the unit, site or property?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This fixed term tenancy began on December 1, 2008 and expired on November 30, 2009, and then reverted to a month-to-month tenancy thereafter. The tenants vacated

the rental unit on April 30, 2010. Rent in the amount of \$900.00 was payable in advance on the 1st day of each month. On November 27, 2008 the landlord collected a security deposit from the tenants in the amount of \$450.00. A move-in condition inspection report was completed at the outset of the tenancy.

The landlord's agent testified that on April 26, 2010 the tenant asked the landlord's agent why she had no response to the tenants' notice to vacate the unit on April 30, 2010, and stated that she had put it in the landlord's mailbox on March 28 or 29, 2010. The landlord replied that she had not received it, so the tenant gave her another notice personally the next day which stated that the tenants would be vacating the rental unit on May 31, 2010. However, on April 30, 2010 the tenant returned the keys and the landlord's agent asked about a move-out condition inspection report. The tenant responded that she didn't want to conduct the inspection and left. The landlord's agent then completed the move-out condition inspection report the same day by herself. Later, in the course of the hearing, the landlord's agent testified that she completed the move-out condition inspection report on May 3, 2010.

The landlord advertised the rental unit for rent, but provided no evidence of that, and did not remember when the advertisements were placed. She provided a monthly Invoice for The Black Press which shows that two advertisements were placed on May 31, 2010, but does not indicate what units the advertisements were for. She further testified that she possibly received the tenant's forwarding address on April 30, 2010. The landlord is claiming \$900.00 for one month's rent.

The landlord's agent further testified that the kitchen blind was damaged and had to be replaced. Also, a bedroom screen had a hole in it and had to be replaced. Further, the master bedroom door was hollow and had a fist-sized hole in it which had to be repaired. The landlord is claiming \$40.00 for the bedroom door; \$25.00 for the screen; \$30.00 for the blinds; \$115.50 for carpet cleaning; and \$290.00 for general cleaning of the rental unit. She provided a "Cleaning Charge Sheet" in advance of the hearing showing that a total of 14.5 hours were spent by the landlord @ \$20.00 per hour, including materials, for a total of \$290.00. She also proved a Maintenance Invoice that

shows that repairs were completed on May 25, 2010. Receipts for blinds have been provided by the landlord, which total \$40.29 for 3 sets of blinds, but only testified to one blind being damaged. A receipt was also provided for carpet cleaning in the amount of \$231.00

The tenant testified that she provided the landlord with written notice to vacate the rental unit by putting the notice in the landlord's mailbox on March 28, 2010. She did not provide a copy in advance of the hearing. When asked why she then gave the landlord's agent a second notice if she had already given one, the tenant replied that the landlord's agent is difficult to talk to.

Analysis

Firstly, dealing with the landlord's application to retain the security deposit in partial satisfaction of the claim, I refer to Section 36 of the *Residential Tenancy Act* which states that the right of the landlord to claim against a security deposit for damage to residential property is extinguished if the landlord fails to provide the tenant with at least 2 opportunities for the move-out condition inspection. The landlord's agent in this tenancy failed to provide 2 opportunities for the inspection, and therefore the right to claim against the security deposit for damages is extinguished.

Further, the *Residential Tenancy Act* states that the landlord must return the security deposit to the tenant or apply for dispute resolution claiming against that security deposit within 15 days of receiving the tenant's forwarding address in writing. The landlord testified that she "possibly" received the tenants' forwarding address in writing on April 30, 2010, but did not apply for dispute resolution until June 22, 2010.

I have also reviewed the tenancy agreement, and an addendum attached to it states that, "Upon vacating the premises, the Tenant agrees to have carpets and drapes professionally cleaned. Cost to be taken from security deposit. Carpet cost to be approximately \$130.00." Section 5 of the *Residential Tenancy Act* also states that landlords and tenants cannot avoid or contract out of the *Act* or the regulations, and that

any attempt to avoid or contract out of this *Act* or the regulations is of no effect. Further, Section 37 states that at the end of the tenancy, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Therefore, I find that the addendum to the tenancy agreement is a contract outside the *Act* and therefore has no effect and cannot be enforced.

With respect to damages to the unit, site or property, the landlord's application for professional carpet cleaning is hereby dismissed without leave to reapply. Further, I find that the landlord has failed to establish that the cleaning required in the unit was beyond normal wear and tear. I accept the evidence of the landlord with respect to broken blinds, but I find that the landlord has failed to establish what those blinds cost. Three receipts have been provided, but there is no indication which of those receipts relates to the kitchen blinds. I also accept the evidence of the landlord with respect to a broken screen and repair to a bedroom door, for which I order the tenants to reimburse the landlord for \$25.00 and \$40.00 respectively.

With respect to the landlord's claim for unpaid rent, again I refer to the *Residential Tenancy Act*, which states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice. In this case, the tenant left a notice in the landlord's mailbox and stated that the landlord's agent was difficult to talk to. However, in order to be successful in defending the landlord's application for unpaid rent, the onus is on the tenant to prove that the landlord received the notice. I find that the tenant has failed to establish that the landlord received it.

However, the onus is also on the landlord to prove what efforts were made to mitigate, or reduce the damages suffered. The landlord was unable to provide any evidence of when the unit was advertised for rent. She provided an invoice for an account with The Black Press, but it contains no information other than 2 advertisements placed on May 31, 2010, a full month after the tenants had vacated the rental unit, and no indication of whether or not those advertisements were suitable for renting this unit, or the amount of rent that would be charged to a new tenant. The *Residential Tenancy Act* states that:

7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

For that reason, the landlord's application for loss of rental income must be dismissed.

Conclusion

For the reasons set out above, the landlord's application for unpaid rent or utilities is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for damage to the unit, site or property is hereby awarded at \$65.00. The landlord is also entitled to recovery of the \$50.00 filing fee.

Pursuant to my authority under Section 72 of the *Residential Tenancy Act*, I order that the amount due to the landlord be offset by the amount due to the tenant from the security deposit currently held in trust by the landlord, and I order that the landlord retain the sum of \$115.00 and return the balance of the security deposit to the tenants forthwith.

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: November 15, 2010.

Dispute Resolution Officer