



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for unpaid rent or utilities, to keep all or part of the pet damage deposit, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenants for this application.

The Landlords provided testimony that they served the Tenants with copies of their evidence and the hearing documents via registered mail. The Tenant confirmed receipt of the hearing documents and some of the Landlords' evidence. The Tenant argued that he did not receive a copy of the carpet cleaning receipt but that he did receive a copy of the photos, typed statements, a letter written to the Tenant's mother, a copy of the hydro bill, and a copy of the move-out inspection form.

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

Issues(s) to be Decided

1. Did the Tenants over hold the rental unit past the Order of Possession date of May 31, 2010? If so, are the Landlords entitled to rent for those dates?
2. Were the Tenants required to have the carpets steam cleaned at the end of the tenancy?
3. Have the Landlords proven entitlement to a monetary claim for the cost of carpet cleaning, unpaid rent, and to cover the outstanding utility bill?

Background and Evidence

I heard undisputed testimony that both Tenants entered into and signed a written tenancy agreement and tenancy addendum for a fixed term tenancy beginning July 28, 2009 and switching to a month to month tenancy after July 31, 2010. Rent was payable on the first of each month in the amount of \$1,200.00 and the Tenants paid a security deposit of \$600.00 on July 28, 2009. The tenancy ended after the Tenants vacated the

rental unit on June 10, 2010 after an Order of Possession effective May 31, 2010 was granted to the Landlords and the Tenants' appeal was denied. The Landlords were ordered to retain a \$50.00 filing fee from the security deposit from the previous hearing leaving \$550.00 security deposit being held by the Landlords.

The Landlords testified and confirmed they have applied for monetary compensation consisting of \$150.00 for professional carpet cleaning, \$220.27 to pay for the outstanding municipal hydro bill, \$400.00 for rent for the period of June 1 – 10, 2010, and to recover the \$50.00 filing fee from this application. They have request to retain the security deposit in partial satisfaction of their claim.

The Landlords had the carpets professional cleaned on June 11, 2010 at a cost of \$150.50 because the Tenants failed to have the carpets cleaned in accordance with #4 of their tenancy addendum which states "Rugs to be professional cleaned at end of tenancy". They confirmed that both Tenants signed this addendum on July 28, 2009. They have confirmed as late as yesterday that the hydro bill is still unpaid. The hydro account was placed in the Tenants' name, in accordance with the tenancy agreement, however if this account remains unpaid the municipality will transfer this amount to the Landlords' property tax invoice. Even though the Landlords were issued an Order of Possession effective May 31, 2010, the Tenants did not vacate the unit until June 10, 2010 and did not pay rent for June. The Landlords argued that the Tenants had verbally agreed for them to keep the security deposit as payment towards unpaid June rent and the carpet cleaning. The Landlords confirmed they applied on this application to keep the security deposit for these amounts.

The Tenant testified that he does not remember entering into any verbal agreements with the Landlord and stated that all agreements need to be in writing. He noted that the Landlords made their application late because they filed 19 days after the tenancy ended and they are required to make application within 15 days. He noted section 38(6) of the Act. He confirmed they did not vacate the unit until June 10, 2010 and did not deny that they did not pay rent for June 2010. He argued that the Landlords have been claiming various amounts in their e-mail communications since the tenancy ended and they continue to change these amounts. He first stated that the other Tenant signed the addendum while he was out of town and later recanted that statement confirming that both Tenants signed both the tenancy agreement and the addendum. He confirmed that they have not paid the outstanding utilities as they were awaiting the outcome of today's hearing. In closing the Tenant stated again that he did not get a copy of the carpet cleaning receipt and that he does not agree with any of the Landlords' claims.

The Landlords stated that they made their application late because they gave the Tenants an opportunity to set up their new hydro account for their new residence and time to pay this outstanding amount as well as one of the Landlords had to undergo surgery.

The Tenant confirmed the Landlords were to use their service address as they provided on the move-out inspection report on June 10, 2010 and requested that they provide me, in confidence, with a different address to send my decision to. The Landlords disconnected from the hearing and the Tenant provided me with the alternate address.

Analysis

The Tenants argued that he did not receive a copy of the professional carpet cleaning invoice the Landlord provided in the *Residential Tenancy Branch's* evidence package. Not providing the respondent with copies of the applicant's evidence is a contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the respondent Tenant has not received a copy of the Landlords' carpet cleaning evidence I find that this documentary evidence cannot be considered in my decision in accordance with # 11.5(b) of the *Residential Tenancy Branch Rules of Procedure*. I did however consider the Landlords' testimony pertaining to this evidence along with all of the above mentioned testimony and the remainder of the Landlords' evidence which included: the application for dispute resolution; two copies of a June 24th, 2010 typed statement; two photos; a copy of the outstanding utility bill; a copy of a letter dated June 20, 2010; a copy of the move-out inspection report; a copy of the tenancy agreement addendum.

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

The evidence supports that in accordance with the tenancy agreement and addendum the Tenants were required to have the carpets professionally steamed cleaned at the end of the tenancy and were required to pay the cost of utilities. The Tenants did not have the carpets cleaned which caused the Landlords to suffer a loss of \$150.50 and a utility bill remains unpaid in the amount of \$220.27 which will be transferred to the Landlords' property taxes if the amount remains unpaid. I am satisfied the Landlords have taken action to mitigate their losses. Based on the aforementioned I find the Landlords have provided sufficient evidence to establish their claim in the amount of \$370.27.

If a tenant remains in possession of the rental unit after the end of the tenancy (over holding) the tenant is liable to pay occupation rent on a per diem basis until the landlord recovers possession of the rental unit in accordance with # 3 of *The Residential Tenancy Policy Guideline*. The evidence supports the Tenants over held the rental unit from June 1 – 10, 2010 without paying the Landlord to occupy the unit. Based on the aforementioned I find there is sufficient evidence to support the Landlords claim in the amount of \$400.00.

The Landlords have been successful with their application therefore I award the Landlords recovery of the filing fee.

Section 38(3) of the Act provides that a landlord may retain from a security deposit an amount that the director has previously ordered the tenant to pay the landlord; while section 38(4) provides that the landlord may retain an amount from the security deposit if at the end of the tenancy, the tenant agrees **in writing** the landlord may retain the amount. In this case I heard disputed testimony that there was a verbal agreement for the Landlords to retain the security deposit however there was no written agreement. Therefore the alleged verbal agreement cannot be upheld.

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the evidence supports the tenancy ended June 10, 2010 and the Tenants provided the Landlords with their forwarding address on June 10, 2010. Therefore the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution

no later than June 25, 2010. The Landlords filed for dispute resolution on June 29, 2010.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit.

Monetary Order – I find that the Landlords are 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 as follows:

Professional Carpet Cleaning	\$150.00
Unpaid rent for June 1 – 10, 2010	400.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$820.27
Less balance of Security Deposit of \$550.00 x 2 plus Interest on \$600.00 from July 28, 2009 to May 19, 2010 of \$0.00 Interest on \$550.00 from May 20, 2010 to Nov. 17, 2010 of \$0.00	-1,100.00
TOTAL OFF-SET AMOUNT DUE TO THE TENANTS	\$279.73

Conclusion

A copy of the Tenants' decision will be accompanied by a Monetary Order for **\$279.73**. The order must be served on the Landlords and is enforceable through the Provincial Court and enforced 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: November 18, 2010.

Dispute Resolution Officer