

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, 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 tenants 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 landlord testified that he sent the tenants a copy of his dispute resolution hearing package by registered mail on July 16, 2010. As the tenants confirmed receiving this package, I am satisfied that the landlord served them with the dispute resolution hearing package in accordance with the *Act*.

The parties testified that they sent one another their written evidence prior to the hearing. Although the landlord received the tenants' written evidence in advance of the hearing, the tenants said that they had not received the landlord's written evidence. The landlord said that he sent his written evidence by registered mail and provided the Canada Post Tracking Number. Although he was late in sending this evidence on November 28, 2010, the tenants said that they were advised by Canada Post that a package was waiting for them at the post office. Since the evidence package is deemed to have been served within 5 days of its mailing, I accept that the landlord has served this evidence. However, as the tenants said that they had not received these documents, the landlord reviewed the evidence package at the hearing. The tenants testified that they had not received the landlord's photographs of damage to the bedroom wall and his copy of the move-out condition inspection report.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent or loss in rent stemming from this tenancy? Is the landlord entitled to a monetary award for damage to the rental unit? Is the landlord entitled to retain all or a portion of the tenants' security deposit? Is the landlord entitled to recover his filing fee for this application from the tenants?

Background and Evidence

This tenancy commenced as a one year fixed term tenancy on August 15, 2005. When the initial fixed term expired, the tenancy continued on a month-to-month basis.

Monthly rent by the end of this tenancy was set at \$924.00 and \$15.00 for parking, payable on the first of each month. The landlord continues to hold the tenants' \$435.00 security deposit, paid on July 28, 2005.

The landlord entered into written evidence a copy of the tenant's May 31, 2010 written notice to end this tenancy which reads follows.

...We're giving you notice that we will be moving out from apartment 106 in July 01, 2010.

If you're willing to accept half month payment (till July 15) we are willing to move by July 11.

Please reply back if this solution suits you.

The landlord testified that he spoke with the tenants during the first week of June 2010 to let them know that it was alright for them to vacate on July 15, as long as they paid for damage that they caused to a parking gate and gave him a cheque for half of July's rent. He said that he only learned of their decision to vacate by July 1, 2010 between mid-June and June 20, 2010. By then, he said he was unable to rent the premises as of July 1. He requested a monetary award of \$473.50 for unpaid rent for half of July 2010, in accordance with his oral agreement to their May 31, 2010 proposal to stay in the rental unit until July 11. The tenants testified that the landlord never gave them a definitive answer to their May 31, 2010 proposal to leave on July 11, telling them each

time that he was “working on it.” They said that they told him on June 14, 2010 that they would be leaving by July 1, 2010 in accordance with their May 31, 2010 letter.

The parties agree that they conducted a joint move-in condition inspection, as reflected in their signed August 8, 2005 condition inspection report. The parties also attended a move-out condition inspection on July 2, 2010. The landlord said that he filled out the report with the tenants, although they refused to sign. He said that he did not sign the move-out condition inspection report or send it to them because they would not agree to sign. He entered the two reports into written evidence. The parties agreed that they did not inspect the bedroom together on July 2, 2010. The landlord later claimed there was damage in the bedroom wall caused by nail holes and damage caused by installing a shelf unit. He applied for a monetary award of \$201.60 to repair the damage.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters, estimates and invoices, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here.

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.

There is conflicting oral testimony between the landlord and tenants regarding any oral agreement following the tenants’ written May 31, 2010 notice to end tenancy. The landlord was attempting to rent a two-bedroom apartment on this property for July 1, 2010. He said that he had another apartment for rent in that building at that time, even though he was showing the tenants’ rental unit on occasion to potential new renters.

I find it equally likely that there was or was not an oral agreement between the parties to extend the date of the end of this tenancy until July 11, 2010. The landlord admitted that he had nothing in writing other than the tenants' written notice to end tenancy by July 1, 2010. Under these circumstances, I disallow the landlord's application for a monetary award for unpaid rent, as he has failed to demonstrate that there is reason to override the tenants' written notice to end this tenancy by July 1, 2010.

At the hearing, the landlord asked for consideration of a monetary award for the tenants' overholding of the rental premises beyond July 1, 2010. In response, the tenants gave undisputed oral testimony that they had their belongings out of the rental unit by July 1, 2010 and that the request to conduct the move-out condition inspection on July 2, 2010 was made by the landlord. As I accept their oral testimony on this matter, I dismiss the landlord's request for a monetary award for the tenants' overholding of the rental unit.

I have also considered the landlord's application for a monetary award to repair damage he maintained was caused by the tenants to the wall in one of the bedrooms. The tenants claimed that this wall was already damaged when they moved into the rental unit. However, the joint move-in condition inspection report they signed showed no record of any damage by nails, etc., to the wall in the bedroom. The landlord admitted that he did not inspect this bedroom with the tenants during the joint move-out condition inspection. The landlord did not send the tenants a copy of his report or photographs of this damage until he sent his written evidence package to the tenants. At the hearing, the male tenant testified that there likely was some damage caused by nail holes to the bedroom wall, but he did not believe that this damage required a \$200.00 repair. I allow the landlord a monetary award of \$75.00 to repair damage to the wall in the bedroom, as I believe the tenants bear a measure of responsibility for this damage.

The parties agreed that the tenants did not clean the carpet before they vacated the premises, nor did they clean the oven. The tenants did not dispute the landlord's claim for \$95.20 for carpet cleaning or the landlord's claim for \$80.00 for oven cleaning and other general cleaning in the rental unit. I allow a monetary award for both of these

items. As the landlord has been partially successful in his claim, I also allow him to recover \$25.00 from his filing fee from the tenants.

Conclusion

I issue a monetary Order in the following terms in the tenants' favour.

Item	Amount
Carpet Cleaning	\$95.20
Oven Cleaning and General Cleaning	80.00
Tenant's Responsibility for Damage to Bedroom Wall	75.00
Less Security Deposit Plus Interest (\$435.00 + \$15.41 = \$450.41)	-450.41
Recovery of Filing Fee for this application	25.00
Total Monetary Order	(\$175.21)

This Order directs the landlord to return to the tenants \$175.21 from their security deposit to reflect that portion owing to them when deductions are taken into account.

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord 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*.