

DECISION

Dispute Codes

Landlords: MND, MNR, MNSD, MNDC
Tenants: DRI, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with cross applications filed by the landlords and the tenants. The landlords have applied for a monetary order for damage to the unit, site or property; for unpaid rent or utilities; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order permitting the landlords to retain the security deposit in partial satisfaction of the claim. The tenants have applied to dispute an additional rent increase; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlords return all or part of the security deposit; and to recover the filing fee from the landlords for the cost of this application.

One of the landlords attended the conference call hearing and both tenants attended. At the outset of the hearing, the landlord stated that she already has an order dealing with unpaid rent, and that her copy of the Landlord's Application for Dispute Resolution does not contain an application for a monetary order for unpaid rent. The copy on file at the Residential Tenancy Branch does contain that application. The landlords withdraw that portion of the claim, and I dismiss that portion without leave to reapply.

The parties each gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All information and testimony provided has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Are the tenants entitled to a monetary order dealing with an additional rent increase?

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

Are the tenants entitled to a monetary order for return of all or part of the security deposit?

Are the landlords entitled to a monetary order for damage to the unit, site or property?

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

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This month-to-month tenancy began on March 1, 2010 and ended on July 7, 2010.

Rent in the amount of \$1,800.00 per month was payable at the beginning of the tenancy, however the undisputed evidence of the parties is that the landlords permitted the tenants to rent the lower level of the house in exchange for paying \$2,500.00 per month rent. The tenants started renting the whole house from the landlords on May 1, 2010 and a new tenancy agreement was signed by the parties. Further, the landlords collected a security deposit in the amount of \$900.00 and a pet damage deposit in the amount of \$100.00 from the tenants on February 15, 2010. The rental unit is a house with a suite on an acreage and the tenants also rented a portion of the property as a horse boarding rental, and the tenants collected rent. The landlord testified that she did not collect rent directly from the tenants in the lower level of the house.

The landlord testified that the tenants had been evicted for non-payment of rent, and the services of a Court Bailiff were required to move the tenants off the property. The landlord claims that the tenants have left the rental property in a state that required several dump runs and cleaning and repairs. She stated that tires, camper equipment, construction wood and other debris was left behind that required 6 trips to the dump, and provided receipts for each trip. Further, the house had been painted in 2009 and dog scratches now appear around doors, corners are severely damaged requiring mudding and paint. She also stated that the hallway is 17 feet long and all walls had to

be repainted as well as 2 doors. Further, 2 bedrooms had moulding that needed to be replaced. The cost for paint and moulding is \$431.04. She stated that the house was pristine and freshly painted when the tenants moved in, but did not conduct a move-in condition inspection report or a move-out condition inspection report.

The landlord also testified that the floors in 2 bedrooms were damaged from animal excrement and had to be removed. The landlord replaced these floors with laminate at a cost of \$107.92.

Showers in both bathrooms were also damaged; one shower head was hanging, and in the other the faucet in the tub was hanging loose and had to be replaced.

The landlord also testified that the tenants' goats ate the bark off 5 fruit trees and a willow tree. Further, the rose bushes and perennials are all gone as a result of the tenants' animals. The driveway also had to be re-grated, and fencing repaired. She stated that the grounds had been destroyed by the tenants' animals.

She also testified that the tenant did some electrical repairs that the landlord did not know about. She hired an electrician to do some repairs in the kitchen sockets as well as the bathroom and master bedroom.

When questioned about the carpets that were replaced by the landlord after the tenants had moved out, the landlord stated that she had given the tenants permission to replace the carpet if they wished during the tenancy, but would have to do so at their own expense. They also painted the small bedroom.

The tenants testified that the kitchen floor was bubbling when they moved in. Their dogs did scratch the trim, and the tenant bought new trim but didn't have a chance to install it before they were removed by the Bailiff. They also would have cleaned the unit, and left cleaning supplies there to do so, but they were moved out before they had a chance to clean. With respect to the shower heads, the male tenant testified that he told the landlord about the shower head hanging, that it simply fell off.

The tenants also testified that the landlords collected rent from the basement suite in the amount of \$800.00 instead of allowing these tenants to collect rent, and were still charged \$2,500.00. The female tenant testified that the tenants in the basement suite attended at her place of employment and told her that the landlords told them they would be collecting the rent. The tenants are claiming return of the security deposit and \$800.00 in rent collected by the landlord when it ought to have been collected by the tenants.

The tenants testified that originally the tenancy was meant to be a rent-to-own tenancy, and that shelters and fencing for animals were included in the tenancy agreement. She further testified that she moved some of the perennials.

The tenants also testified that 4 units shared one driveway, and that in May, 2010 a tractor and a truck were parked in the driveway which prevented them from going to or from the rental unit.

Analysis

The *Residential Tenancy Act* states that if the landlord fails to conduct a move-in condition inspection report or a move-out condition inspection report with the tenants, the landlord's right to claim against the security deposit or pet damage deposit for damages to a rental unit is extinguished. In this case, I find that the landlord's right has been extinguished.

Also, in order to be successful in a claim for damages, the onus is on the claiming party to satisfy a 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of the damage or loss;
4. What steps the claiming party took to mitigate, or reduce such damages or loss.

In regards to meeting element two of the test for damages, the landlord's position was that this damage was clearly committed by the tenants during the course of this tenancy

and the rental unit was in pristine condition at the outset of the tenancy. I find that this can only be established with clear verification of the condition of the unit at the time the tenancy began as compared to the condition of the unit after the tenancy had ended.

I do find, however, that the tenants have admitted to some of the damages claimed by the landlords, and further, the evidence is clear that the tenants were removed from the rental unit by a Court Bailiff, which in essence caused the landlords to effect cleaning of the rental unit. In the circumstances, I find that the landlords have proven a claim in the amount of \$125.30 for trips to the local landfill; \$526.20 for paint and painting supplies; \$480.00 for painting services; \$390.00 for cleaning services; and \$174.58 for perennials; for a total of \$1,696.08.

I further find that the parties agreed to the rental increase in exchange for the tenants being permitted to rent and collect rent money from any tenants for the lower level of the rental unit. I further accept the evidence of the landlord that the landlord did not collect rent from the tenants in the lower level of the house.

Conclusion

The tenants' application to dispute an additional rent increase is hereby dismissed without leave to reapply.

Having found that the landlord's right to claim against the security deposit and pet damage deposit for damages is extinguished, I must award the security deposit to the tenants. The tenants' application for a monetary order for return of the security deposit and pet damage deposit is hereby granted at \$1,000.00.

For the reasons set out above, the landlords' claim for damages is hereby awarded at \$1,696.08.

Pursuant to my authority under Section 72 of the *Residential Tenancy Act*, I order that the amounts be set off from one another. I order that the landlords retain the security

deposit and pet damage deposit and interest in the total amount of \$1,000.00 and I hereby grant a monetary order in favor of the landlords for the balance of \$696.08.

Since both parties have been partially successful with their applications, I decline to order that either party recover the filing fee for the cost of this application.

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: December 09, 2010.

Dispute Resolution Officer