

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 and utilities, 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 tenant's security and pet damage deposits in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant 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 parties agreed that the landlord sent and the tenants received a copy of the landlord's dispute resolution hearing package by registered mail shortly after the landlord applied for dispute resolution on August 3, 2010. I am satisfied that the landlord served these documents to the tenants in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for loss of rent for February 2010? Is the landlord entitled to a monetary award for unpaid utilities arising from this tenancy? Is the landlord entitled to a monetary award for damage to the rental premises? Is the landlord entitled to retain the tenants' security and pet damage deposits in partial satisfaction of the monetary award issued? Is the landlord entitled to recover her filing fee for this application from the tenants?

Background and Evidence

This month-to-month tenancy commenced on October 1, 2008. According to the residential tenancy agreement, monthly rent was set at \$1,100.00, payable on the first of each month. The landlord continues to hold the tenants' \$550.00 security deposit and \$200.00 pet damage deposit, paid on September 11, 2008.

The parties entered into written evidence a copy of the tenants' email notification to the landlord on January 1, 2010 at 8:00 p.m. advising her that they were going to be moving into their new house by the end of January. In this email, they stated "we are giving our notice for the 1st of February, but will probably be out before that." The landlord gave oral testimony that she did not become aware of the tenants' intention to end their tenancy by the end of January until January 4, 2010.

The parties agreed that they conducted a joint move-in condition inspection on October 1, 2008. The tenants entered into written evidence a copy of the move-in inspection report they received from the landlord.

The landlord testified that she attempted to conduct a joint move-out inspection with the tenants, however, could not arrange one with them. She said that she notified them when she was going to be in that community, but the tenants did not respond. The tenants supplied copies of emails they sent to the landlord requesting a joint move-out condition inspection. Both parties agreed that no joint move-out condition inspection was conducted. The landlord said that she conducted her own condition inspection and prepared her own move-out condition inspection report. However, she did not send a copy of this report to the tenant when she obtained the tenants' mailing address, nor did she submit a copy of this report as written evidence for this hearing.

The landlord's application for a monetary award included the following items:

Item	Amount
Unpaid February 2010 Rent	\$1,100.00
Unpaid Utilities- November 2009 – End of February 2010	381.05
Advertising Costs	357.03
Lock Change	35.00
Cleaning	50.00
Damage to Laminate Flooring	300.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award Requested	\$2,273.08

The female tenant testified that the tenants vacated the rental unit on January 21, 2010. She said that as per the arrangement with the landlord, the tenants gave one set of keys to a friend of the landlord and pinned the other set of keys to the door of the other tenants in the rental property. She said that the tenants should only be responsible for rent and utilities until January 31, 2010, as they gave proper notice to the landlord that they would be vacating by then.

Analysis

Monetary Award

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.

I find that the tenants did not comply with the requirements of subsection 45(1)(b) of the *Act* by notifying the landlord the day before the day in the month that the rent is payable under the tenancy agreement. Furthermore, I find that the tenants' email to the landlord did not comply with section 52 of the *Act* which requires a tenant to sign and date a written notice to end a tenancy. No evidence was presented by the tenants that would indicate that they did not have the landlord's mailing address. The landlords provided their mailing address in the residential tenancy agreement. The landlord's address has

not changed since that time. I find the tenants responsible for the landlord's loss of rent for February 2010 and find that the landlord tried to rent the premises for that month, but was unsuccessful in her efforts to mitigate the tenants' losses.

In accordance with sections 7(1) and 67 of the *Act*, I issue a monetary award in the landlord's favour of \$1,100.00 for lost rent for the month of February 2010.

The tenants did not dispute the calculations used by the landlord in her application for a monetary award for unpaid utilities from November until the end of this tenancy. Rather, the tenants contested the end date of their tenancy. The female tenant also said that the landlord did not present invoices to the tenants for the latter periods of the tenancy until after they vacated the premises. Since I find that the tenants did not provide proper notice to the landlord to end this tenancy by the end of January, I find that they are responsible for their one-third portion of the utility costs as calculated by the landlord. I issue a monetary award for unpaid utilities in the landlord's favour in the amount of \$381.05.

I dismiss the landlord's application for recovery of her costs to advertise the availability of this rental unit. In a periodic tenancy of this nature, the tenant is not responsible for the landlord's costs of advertising a rental unit once notice is provided of the tenant's intention to end the tenancy. Whether the tenants gave notice that they were ending this tenancy on February 1 or March 1, 2010, the landlord would still have had to incur these advertising costs, a standard cost of doing business as a landlord.

Section 25(1) of the *Act* and Residential Tenancy Policy Guideline 7 establish that the landlord is responsible for re-keying or otherwise changing the locks at the end of a tenancy so that keys issued to previous tenants do not give access to the rental unit. The landlord is required to pay any costs associated with changing locks at the end of a tenancy. In this case, the landlord testified that she did have one set of keys but not the other set. Under such circumstances and in the absence of any receipts or invoices from the landlord, I find insufficient evidence to find that the landlord is entitled to a

monetary award from the tenants to change the locks for the rental unit. I dismiss the landlord's claim for a monetary award to change the locks on the rental premises.

The landlord failed to provide a copy of a completed move-out condition inspection report and did not send one to the tenants. The landlord provided no photographs from before or after the tenancy that would lend support to her claim for a monetary award for damage caused by the tenants. The landlord provided no receipts, estimates or invoices for any work conducted to repair or restore the rental unit to its previous condition. For these reasons, I dismiss the landlord's application for a monetary award to repair her laminate flooring. However, the female tenant provided written and oral evidence that the tenants did not clean the windows or blinds when they left the rental unit. Based on the evidence presented by both parties, I allow a monetary award of \$30.00 for the landlord's cleaning of the blinds and windows.

Security and Pet Damage Deposits

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the security and pet damage deposits or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposits. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must pay the tenant double the amount of the deposits (section 38(6)). With respect to the return of these deposits, the triggering event is the provision by the tenant of the forwarding address.

In this case, the tenants did not provide a forwarding address in writing until they sent the landlord a July 19, 2010 letter providing written notice of their new mailing address where the landlord could send their security deposit. The landlord testified that she received this letter on July 30, 2010. She filed for dispute resolution for permission to retain the deposits on August 3, 2010, within 15 days of receiving the tenants' forwarding address in writing.

I direct that the landlord retain the tenants' security and pet damage deposits plus interest in partial satisfaction of the monetary award issued. I deduct the amount of the deposits and interest from the amount of the monetary award.

Filing Fee

I allow the landlord's application to recover her filing fee from the landlord.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of **\$807.61** in the following terms which allows the landlord to retain the tenants' security deposit and to recover the landlord's filing fee for this application:

Item	Amount
Unpaid February 2010 Rent	\$1,100.00
Unpaid Utilities- November 2009 – End of February 2010	381.05
Cleaning of Blinds and Windows	30.00
Less Security and Pet Damage Deposits plus Interest (\$750.00 + \$3.44 = \$753.44)	-753.44
Recovery of Filing Fee for this application	50.00
Total Monetary Award Requested	\$807.61

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