



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for unpaid rent or utilities and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlords to the Tenants, was sent via registered mail on July 29, 2010. Mail receipt numbers were provided in the Landlords' evidence. The Tenants confirmed receipt of the hearing documents and the Landlords' evidence.

The parties appeared at the teleconference hearing, 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 breach the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, have the Landlords proven entitlement to a monetary claim as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a month to month tenancy agreement effective October 1, 2005. Rent was payable on the first of each month in the amount of \$750.00 and \$375.00 was paid by the Tenants on October 1, 2005 for a security deposit.

The Landlord testified that after issuing a 10 Day Notice to End Tenancy on June 21, 2010, the Tenants vacated the rental unit in the middle of the night on July 3, 2010. He is seeking unpaid rent in the amount of \$1,750.00 which consists of \$250.00 owing from

May, 2010, \$750.00 for June 2010, and \$750.00 for loss of rent of July 2010. He requested to include in his claim \$550.00 towards replacement of a broken window and money to remove all of the garbage left behind by the Tenants. He confirmed the \$550.00 amount in his original claim was an estimate and the actual amounts were \$478.28 for the window replacement and \$275.25 for all of the garbage removal as supported by his additional evidence provided to the *Residential Tenancy Branch*. He confirmed he did not provide the Tenants with copies of the original receipts for the window or garbage removal.

The Tenants testified that the Landlords never once gave them a receipt for their rent payments. They lost track of when they paid rent so they began to pay their rent every four weeks and they were of the opinion they were caught up on their rent. The male Tenant argued that they never made partial payments and always provided the Landlord with \$750.00 each time they paid rent. He questioned how he could prove this without receipts. The stated that they conducted a walk through with the Landlord when they first occupied the unit in 2005 and they showed the Landlord the crack in the window at that time and he refused to repair it. The house was old and showed signs of the presence of mould. They were upset that they paid the Landlord \$750.00 in June 2010 only to be served with a 10 Day Notice to End Tenancy a week later on June 21, 2010. They confirmed they did not file for dispute resolution to dispute the Notice and argued they vacated the unit by June 30, 2010 so should not be held responsible for July 2010 rent. They admit to leaving some possessions behind and stated they could not afford to pay to remove the debris after having just paid the Landlord \$750.00 the week before receiving the 10 Day Notice. They said the Landlords told them to either purchase the property or to move out.

The Landlord confirmed the property was for sale at that time. The Tenants were always late paying rent and they approached the Landlords about purchasing the property however that never proceeded. The Landlord thought it was another stall tactic by the Tenants to delay paying their rent or moving out. The house is not old it was build in 1984 and there was no broken window at the beginning of the tenancy. The Tenants were still occupying the unit after June 30, 2010 and they did a midnight move and left the keys in the rental unit mailbox which the Landlord found July 3, 2010.

The Tenants confirmed they did not notify the Landlord they were vacating the unit and that they did put the keys in the rental unit mailbox.

Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlords would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlord to 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 Tenants.

The landlord claims for unpaid rent of \$250.00 for May 2010 plus \$750.00 for June 2010, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I do not accept the Tenants' testimony that they paid their rent as the evidence of the 10 Day Notice to End Tenancy indicates they did not pay rent. I also note the Tenants failed to make application to dispute the Notice and moved out of the rental property. I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Based on the aforementioned I hereby find there is sufficient evidence to support the Landlords' claim of unpaid rent.

I heard undisputed testimony that the Tenants left debris at the rental unit causing the Landlord to remove the debris. I accept the Landlord's testimony of the volume of debris left behind, the required amount of cleaning, and the fact the Landlord was not made aware that the Tenants vacated the unit until July 3, 2010. All of the above support the Landlord's testimony that he was not able to re-rent the unit for the month of July 2010; therefore I approve his claim for loss of rent for July 2010.

Having accepted the undisputed testimony that debris was left behind at the unit I find the Landlord provided sufficient evidence that he suffered a loss of \$275.25 for the cost to remove the debris left behind at the rental unit and I approve his request for monetary compensation.

In the absence of a move-in inspection report and in the presence of the Tenants' disputing testimony I find there is insufficient evidence to support the window of the rental unit was broken during the tenancy or that the damage was caused by the actions of the Tenants or any guest allowed access to the rental property.

The Landlord has primarily been successful with his application; therefore I award recovery of the filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Unpaid Rent for May 2010 of \$250.00 plus June 2010 of \$750.00	\$1,000.00
Removable of Debris left at rental unit	275.25
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$2,075.25
Less Security Deposit of \$375.00 plus interest of \$13.27	-388.27
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,686.98

Conclusion

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$1,686.98**. The order must be served on the respondent Tenants and is enforceable

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 21, 2010.

Dispute Resolution Officer