



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

For the landlord – MND, MNR, MNSD, FF

For the tenants – MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the landlord and one brought by the tenants. Both files were heard together. The landlord seeks a Monetary Order to recover unpaid rent and for damage to the rental unit. The landlord also seeks an Order to keep the tenants security deposit and to recover the filing fee. The tenants seek double the return of their security deposit and to recover their filing fee.

The landlord served the tenants by registered mail on November 18, 2010 with a copy of the Application and Notice of Hearing. The tenants served the landlord by registered mail on December 03, 2010 with a copy of the application and a Notice of the Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Is the landlord entitled to keep the security deposit?
- Are the tenants entitled to double their security deposit?



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Background and Evidence

Both Parties agree that this tenancy started on April 01, 2010 and ended either on October 31, 2010 or November 01, 2010. Rent for this unit was \$1,100.00 per month and was due on the first of each month. The tenants paid a security deposit of \$500.00 on May 01, 2010.

The landlords' application

The landlords' agents testify that they received verbal notice to end the tenancy on October 07, 2010. The agent states he informed the tenants that they needed to give one full months notice and states the tenant told him this was his Notice and the tenancy would end on October 31, 2010. The agent states at no time during that conversation did the tenant mention that they had dropped off a letter to the landlords' office giving written notice and their forwarding address.

The landlords' agent testifies that on October 31, 2010 he called the tenants to arrange the move out condition inspection but was informed by the tenants that they were not ready and would be moved out by the next day. The landlords' agent states they could not schedule an inspection on November 01, 2010 so it was scheduled for November 03, 2010. The landlord seeks to recover rent for November due to insufficient Notice from the tenants however as they managed to re-rent the unit on November 15, 2010 at a lesser rent of \$1000.00 per month they seek to recover rent from November 01, to November 15, 2010 to a sum of \$600.00. The landlord states that at the move out condition inspection on November 03, 2010 the tenants gave him letters which they state were copies of the notice to end tenancy and their forwarding address which they had claimed to have left at his office on September 28, 2010.

The landlords' agent testifies that they did a move in condition inspection with the tenants on April 06, 2010 where a strip of wallpaper was missing from the wall. The landlords agent claims the female tenant told him her children had done this. The landlords agent states they returned to the property on April 07, 2010 and while visiting they witnessed the tenants children tear more wallpaper from the walls. On May 10, 2010 during another visit to the unit it was noticed

that yet more wallpaper was missing. The landlords' agent states the female tenant assured him that the walls would be repaired.

During another visit to show a prospective tenant the unit more wallpaper had been removed and at this time the landlords agent states the tenants tried to absolve themselves of responsibility for this damage and stated it had been like that when they moved in. During the move out condition inspection it was noted that the tenants had not repaired the damage to the wallpaper. The landlord states she obtained two quotes to have this repaired and choose the lesser quote of \$336.00. The landlord seeks to recover this amount from the tenants.

The landlord seeks an order to keep the tenants security deposit of \$500.00 to cover the unpaid rent and seeks a Monetary Order for the balance of rent, damages to the unit and the filing fee.

The tenants testify that they hand delivered a letter to the landlords office which contained their notice to end tenancy and their forwarding address. The tenants claim this was left at the reception desk with the landlords' agents' secretary on September 28, 2010. The tenant states that he followed this up with a phone call to the landlords' agent on October 07 to reaffirm that they were moving out at the end of the month as they had concerns because they had not seen any advertisements posted by the landlord to re-rent the unit. The tenants state as they did give one clear months notice they are not responsible for rent for November, 2010.

The tenants agree that their children did peel off a small section of wallpaper but claim the wallpaper was already damaged and was peeling at the edges. The wallpaper in the bathroom was hanging off in tatters due to the humidity in this room and state they removed this because they had a young child and they had concerns the child could put this wallpaper in his mouth. The tenant states she did not get permission from the landlord to do this and did not inform the landlord of the condition of the wallpaper as they were already doing a lot of other work at the house. The tenant states the landlord agreed they could repair the torn wallpaper in the bedroom. The tenant's state they should not be held responsible for the repair to the wallpaper as it was already in poor condition when they moved in.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

The tenant's application

The tenants state that as they gave the landlord their forwarding address in writing on September 28, 2010 and moved from the rental unit at midnight on October 31, 2010. They seek to recover double their security deposit as the landlord did not file an application to keep their deposit until November 18, 2010.

The landlords' agent states he did not receive the tenants forwarding address until November 03, 2010 when they wrote it on the move out condition inspection report and handed him a letter with it. The landlords agent states there is no record of any letters being handed in at his office on September 28, 2010 and suggests these copies were made after the fact and handed to him at the move out inspection.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regards to the landlords application for unpaid rent for November, 2010; The tenants argue that they gave written notice to end their tenancy on September 28, 2010 however the landlord argues that this was not received at his office and he did not get written notice until November 03, 2010.

In this matter the burden of proof falls to the party making the claim and in this instance the tenant claims he gave written notice to the landlord. When a tenant's evidence is contradicted by the landlord, the tenants will need to provide additional corroborating evidence to satisfy the burden of proof. In this instance I find the tenants have not provided sufficient evidence to show that they did provide the landlord with written notice to end the tenancy on September 28, 2010. Consequently, I find the landlord is entitled to recover rent from November 01 to 15, 2010 to the sum of **\$600.00** due to insufficient notice being given to end the tenancy pursuant to section 67 of the *Act*.

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

With regard to the landlords application for damages to the wallpaper in the unit; the tenants agree that their children did peel some wallpaper from the walls and that they removed some wallpaper from the walls in the bathroom. The move in and move out condition inspection reports detail the damage to the wallpaper in these areas of the unit. Section 32(3) of the *Act* states a tenant must repair damage to the rental unit that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant. Consequently, I find in favor of the landlords claim for damages to the sum of **\$336.00** pursuant to section 67 of the *Act*.

With regard to the landlords claim to keep the security deposit in partial satisfaction of the claim; As the landlord has been successful with his claim he is entitled to keep the tenants security deposit of **\$500.00** pursuant to section 38(4)(b) of the *Act*.

With regards to the tenants claim for double the security deposit; I find as the tenants have been unable to provide corroborating evidence to show that they gave the landlord their forwarding address on September 28, 2010 they are not entitled to the return of double their security deposit and their application is dismissed.

As the landlord has been successful with their claim I find they are entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the following amount:

Unpaid rent for November	\$600.00
Subtotal	\$936.00
Plus filing fee	\$50.00
Less security deposit	(-\$500.00)
Total amount due to the landlord	\$486.00

Conclusion



Dispute Resolution Services

Page: 6

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$486.00. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The tenant's application is dismissed without leave to reapply.

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 31, 2010.

Residential Tenancy Branch