

## **DECISION**

Dispute Codes      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 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 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 tenant pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:46 p.m. in order to enable the tenants to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. He entered written evidence that he sent the tenants a copy of his dispute resolution hearing package by registered mail on October 22, 2010. He provided copies of the Canada Post Tracking Number to confirm this mailing. I am satisfied that the landlord served this package to the tenants in accordance with the *Act*.

### Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities and for loss or damage arising out of this tenancy? Is the landlord entitled to retain the tenants' security deposit to partially satisfy the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

This tenancy for a rental house began as a one-year fixed term tenancy on June 21, 2009. When the initial term ended, the tenancy continued as a month-to-month tenancy. Monthly rent at the end of the tenancy was set at \$1,450.00, payable on the first of the month. The tenants were responsible for paying the utilities. The landlord continues to hold the tenants' June 1, 2009 security deposit of \$725.00 plus interest.

The landlord said that he prepared a joint move-in condition inspection report although he did not enter this into written evidence. He testified that the rental property was completely renovated one year prior to the commencement of this tenancy at a cost of \$50,000. He said that these renovations included the installation of new appliances, doors and floors. He said that one other tenancy occurred following these renovations but that tenant left the rental home in very good condition at the end of that tenancy.

The landlord testified that he did not send anything in writing to the tenants requesting a joint move-out condition inspection. No such inspection was conducted nor was an inspection report prepared when the tenants abandoned the property without leaving the landlords keys. The landlord submitted two photographs into evidence.

The landlord entered into written evidence a copy of a September 17, 2010 email from the female tenant to the landlord in which she advised that she could no longer afford to pay the monthly rent because she and the other tenant had separated. In that email, she stated that she intended to vacate the rental premises on October 15, 2010. She asked that the security deposit be applied to the October 2010 rent until that date.

On September 18, 2010, the landlord sent the tenants a 10 Day Notice to End Tenancy for Unpaid Utilities in the amount of \$711.88 that was by that date due. The landlord said that the tenants did not pay any portion of the outstanding utility bill nor did the tenants pay any rent for October 2010.

The landlord testified applied for a monetary award of \$2,561.88 in total which included \$1,450.00 for loss of rent for October 2010 and \$711.88 for unpaid utilities. The landlord also testified that the tenants did not take proper care of the rental unit and left the premises without properly cleaning the suite or cutting the grass. He said that they did not leave him the keys, requiring him to re-key the locks. He said that they did not dispose of beds, a barbeque, mattresses, boxes and chairs which all needed to be taken to disposal site. He provided receipts for the expenses he incurred and asked for a monetary award of \$350.00 for damage to the rental unit, revised at the hearing to \$279.43 to reflect his actual expenses.

### Analysis

In order to claim for damage or loss under section 67 of 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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the undisputed evidence presented by the landlord, I accept the landlord's claim that he experienced losses arising out of this tenancy and that the tenants are responsible for compensating the landlord for these losses. I allow the landlord a monetary award of \$711.88 for unpaid utilities arising out of this tenancy.

While I accept that the tenants did not provide proper notice to the landlord of their intention to end this tenancy in mid-October 2010, section 7(2) of the *Act* requires the landlord to attempt to mitigate the tenants' losses. The landlord said that he commenced advertising the availability of the premises for rental in October 2010 through Craigslist shortly after the tenant notified him that the tenants would be leaving. He said that the tenants showed the rental premises to prospective tenants. The landlord was not able to obtain another tenant until November 1, 2010. I am satisfied by the landlord's evidence that he did attempt to mitigate the tenants' losses. I allow the landlord a monetary award of \$1,450.00 for his loss of rent for October 2010.

The landlord did not enter into written evidence a copy of the joint move-in condition inspection report and did not produce a report at the end of this tenancy. However, the landlord testified that the tenants abandoned the rental unit without leaving the landlord keys and left many unwanted items in the premises. I allow the landlord a monetary award of \$200.00 for the costs he incurred in cleaning the premises, removing garbage and debris, cutting the lawn and rekeying locks.

I allow the landlord to retain the tenants' security deposit plus interest in partial satisfaction of this monetary award. No interest is payable over this period. Since the landlord was successful in this application, I allow him to recover his \$50.00 filing fee.

### Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover losses arising out of this tenancy and his filing fee for this application and to retain the tenants' security deposit.

Item	Amount
Loss of Rental Income October 2010	\$1,450.00
Unpaid Utilities	711.88
Damage to Rental Property	200.00
Less Security Deposit	-725.00
Recovery of Filing Fee for this application	50.00
<b>Total Monetary Order</b>	<b>\$1,686.88</b>

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*.