

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and two of the tenants.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act* (Act).

### Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on June 12, 2008 for a month to month tenancy beginning on June 12, 2008 for a monthly rent of \$1,665.00 (plus parking) due on the 1<sup>st</sup> of each month and a security deposit of \$832.50 was paid. The agreement stipulates there is a fee of \$35.00 for the late payment of rent;
- A copy of a Condition Inspection Report, reporting the condition of the rental unit at the start of the tenancy (June 12, 2008) and at the end (April 16, 2010). The report is signed by both the landlord's agent and one of the tenants at move in and was signed only by the landlord at move out;
- A copy of the landlord's calculations and summary for security deposit reconciliation;
- A copy of a cheque from one of the tenants to the landlord dated April 1, 2010 noted as for rent and parking in the amount of \$1910.00 returned from the landlord's bank stamped "Payment Stopped";
- Invoices for plaster work and painting completed; window replacement; and light bulb replacement; and
- Several photographs of the rental unit taken at or near the end of the tenancy.

The landlord seeks compensation for unpaid rent for the month of April 2010 and late fees (\$1945.00); for repairs (walls and a window) (\$320.00) and painting (400.00) and replacement of light bulbs (\$17.00). The total amount of compensation sought is \$2,682.00.

The tenants testified they had been issued a notice to end tenancy and were originally going to dispute the notice but later decided not to and to move out by the time they found a new place and moved out of the dispute address it was April 6, 2010. The tenant's position is that they were supposed to move out any way and so the landlord is not entitled to rent.

The tenants questioned the dates of the photographs taken, stating they were taken sometime before they were completely moved out as they have some of the belongings in the pictures still with them as of the date of this hearing. However, the tenant's do not dispute the condition of the window or the holes in the walls.

### Analysis

Section 26 of the *Act* requires that tenants pay rent when it is due under the tenancy agreement. Regardless of the tenants intent to either dispute the Notice to End tenancy they were given or to vacate the rental unit, as they were still living in the rental unit on April 1, 2010 it was incumbent upon them to pay rent for the month of April 2010. As such, I find the landlord is entitled to the payment of rent.

In relation to the late payment fee requested by the landlord, I accept the tenancy agreement contains a clause that late payments and returned cheques are subject to a service charge of \$35.00. However, Residential Tenancy Regulation Section 7(1)(d) stipulates a landlord may not charge such a fee in excess of \$25.00. I therefore grant the landlord \$25.00 for a late payment for rent for the month of April 2010.

Section 37 of the *Act* requires tenants, when vacating a rental unit, to leave it reasonably clean and undamaged except for reasonable wear and tear. As the tenants don't dispute the condition of the window or the walls, I find the landlord has established the costs associated with the required repairs.

The Residential Tenancy Policy Guideline #1 states a landlord is responsible for "making sure all light bulbs and fuses are working when the tenant moves in." It goes on to say that the tenant is responsible for "replacing light bulbs in his or her premises during the tenancy."

As the tenancy had ended when the landlord replaced the light bulbs, I find, in accordance with the above noted guidelines that the tenants are not responsible for their replacement and I dismiss this portion of the landlord's application.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,705.00** comprised of \$1,910.00 rent and parking owed; \$25.00 late fees; \$720.00 wall and window repair and painting and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$839.43 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,865.57**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order 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*.

Dated: March 30, 2011.

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Residential Tenancy Branch