



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, 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 tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover their 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 landlords entered written evidence that they sent the tenants a copy of their dispute resolution hearing package by registered mail on December 16, 2010. The female tenant testified that she received the landlords' package. The male tenant confirmed that he has reviewed the package sent to the female tenant, his wife. I am satisfied that the landlords served this package and their evidence to the tenants in accordance with the *Act*.

Although the tenants' evidence package was received late, I accepted the tenants' written evidence as the landlords confirmed that they had received and reviewed it. I did not consider the contents of a DVD that the tenants included with their evidence package. I was unable to properly open the DVD and consider this late evidence as they did not provide any mechanism whereby I could review this evidence.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for damage caused during this tenancy? Are the landlords entitled to a monetary award for unpaid rent, utilities or losses arising out of this tenancy? Are the landlords entitled to retain the tenants' security deposit in partial satisfaction of the monetary award they requested? Are the landlord entitled to recover their filing fee for their application from the tenants?

Background and Evidence

This tenancy commenced originally as a 12-month fixed term tenancy on June 15, 2008. After the expiration of that fixed term, the tenancy converted to a month-to-month tenancy with \$1,200.00 payable in advance on the first of each month. The male landlord (the landlord) testified that he continues to hold the tenants' \$600.00 security deposit paid on June 12, 2008, plus applicable interest.

The parties agreed that no joint move-in condition inspection was requested by the landlords or conducted when this tenancy commenced. A joint move-out condition inspection was conducted on December 12, 2010, twelve days after the tenants vacated the rental unit on November 30, 2010. The condition inspection report prepared by the landlords was a list of items and amounts the landlords sought as damages to apply against the tenants' security deposit. The landlords provided a copy of a Settlement Charges Guide that they had provided to the tenants at an earlier stage of this tenancy, signed by the female tenant. The female tenant also signed a note on December 12, 2010, stating that she refused to be charged for repairs claimed by the landlord.

The parties agreed that the tenants called the landlord on September 1, 2010, to advise that they were planning to vacate the rental unit by the end of October 2010. The tenants provided undisputed oral testimony that the male landlord told them they did not need to send anything to them in writing about their plan to end this tenancy. The landlord said that he commenced trying to rent the premises for November 1, 2010. After a short period, the tenants changed their minds about vacating by the end of October 2010. The female tenant testified that the tenants called the landlord again on October 31, 2010 to advise that they were planning to vacate the rental unit by November 30, 2010. The tenants said that the landlord again told them that it was not necessary to send any written confirmation regarding their plan to vacate the rental unit. The landlord said that he once more commenced efforts to rent the premises to other tenants as of December 1, 2010. He testified that he was unable to obtain a tenant by the time the tenants vacated the rental unit on November 30, 2010, and was only able to re-rent the premises by January 15, 2011.

The landlords' application for a monetary award of \$2,051.00 included:

Item	Amount
Unpaid December 2010 Rent	\$1,200.00
Unpaid Utilities	226.00
Damage to Rental Unit	380.00
Cleaning	245.00
Total Monetary Award Requested	\$2,051.00

Analysis

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.

Analysis - Landlords' Claim for Loss of December 2010 Rent

The landlords claim for their loss of December 2010 rent was based on the tenants' alleged failure to provide proper notice that they were ending their tenancy and the landlords' claim that the tenants left the rental unit in such poor condition that the premises could not be rented for December 1, 2010.

I have considered the undisputed evidence that the parties had a verbal agreement to end this tenancy by November 30, 2010. I find that the terms of this agreement were clear and both parties agreed on the interpretation of those terms. The parties were taking measures to act on the understanding that the tenants would be vacating the rental unit by November 30, 2010. Under these circumstances, despite the wording of section 52 of the *Act* that calls for a notice to end tenancy to be issued in writing, I find there are no reasons why the agreed terms of the tenants' ending of this tenancy cannot be enforced. The landlords did not dispute the tenants' sworn testimony that the male landlord told them that there was no need to provide him with written notice to end their tenancy. I find that it would offend the terms of their verbal agreement if I were to allow the landlords' claim for a monetary award for unpaid rent for December 2010 on the basis that the tenants provided no written notice to end their tenancy.

As of the date the tenants vacated the rental premises, the landlord had been trying to rent the rental premises but had been unsuccessful. The landlord did not enter evidence of showings to prospective renters who objected to the condition of the rental unit. After obtaining possession of the rental unit, the landlords submitted no evidence of attempting to expedite the joint move-out inspection process. Instead, the parties met on December 12, 2010 to conduct the joint move-out condition inspection. After conducting this inspection, the landlords applied for dispute resolution the following day and only provided a copy of their list of items damaged as part of their application for dispute resolution. I do not find that the landlords have submitted sufficient evidence to demonstrate that the tenants' damage to the rental unit hampered their efforts to re-rent the premises and caused them loss of rent in December 2010. In reaching this finding, I

also note that the tenants entered undisputed testimony that at least some of the damages claimed by the landlord were present when they commenced their tenancy.

Based on the evidence presented, I dismiss the landlords' application for a monetary award for lost or unpaid rent for December 2010. I do so because the evidence indicates that the parties both acted on their verbal agreement that this tenancy would end on November 30, 2010 and the landlords took action to secure new tenants by that date. I do not accept that the tenants were responsible for the landlords' inability to locate new tenants for December 2010.

Analysis - Landlords' Claim for Unpaid Utilities at End of Tenancy

The landlords provided undisputed evidence that the tenants continue to owe their half of the hydro bill for a 55-day period ending on November 30, 2011. The tenants said that they have not paid the \$226.05 hydro bill and agreed that this amount remains outstanding and should be applied against their security deposit. Based on the parties' identical evidence regarding this issue, I issue a monetary award in the landlords' favour in the amount of \$226.05 for unpaid utilities arising out of this tenancy.

Analysis - Landlords' Claim for Damage and Cleaning to Rental Unit

When disputes such as this one arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 24(2) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

24 (2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

The parties agree that the landlord did not request a joint move-in condition inspection and issued no report regarding the condition of the rental unit at the commencement of this tenancy. Although the parties did meet for a joint move-out condition inspection, there were few details in the landlords' report provided to the tenants as part of the landlords' dispute resolution hearing package. Responsibility for completing these reports rests with the landlord.

The landlords provided photographs of the condition of the rental unit at the end of this tenancy and damage to the rental unit that the landlords maintained occurred during the tenancy. The landlords provided no receipts regarding any of the damage claimed; the female landlord testified that much of the work was done by her husband, the male landlord. The male landlord testified that he spent 3 days cleaning and repairing the rental unit after the tenants ended their tenancy, working 5 or 6 hours per day.

The male tenant did not dispute the accuracy of the photographic evidence presented by the landlords. Although he cited a number of issues that were present when they commenced their tenancy and were never rectified by the landlord, the male tenant admitted responsibility for some damage that occurred during the course of this tenancy. For example, he accepted responsibility for a hole in the back door, various scuffs and marks on the wall, and admitted that the tenants did not clean behind the stove or fridge when they vacated the rental unit. The tenants provided written evidence of a November 30, 2010 invoice from a professional cleaner who spent time cleaning the bathroom, kitchen and floors at the end of their tenancy.

The landlords' failure to conduct a joint move-in condition inspection, to provide an adequate report regarding the joint move-out condition inspection and to provide receipts limits the landlords' entitlement to a monetary award. However, based on the evidence presented and the oral testimony of the parties, I issue a limited monetary award in the landlord's favour of \$100.00 to repair damage that the tenants admit occurred during the tenancy and \$50.00 for additional cleaning that was necessary at the end of this tenancy.

Security Deposit and Filing Fee

I allow the landlords to retain \$376.05, the total of the monetary awards outlined above, from the tenants' security deposit plus interest. Since the landlords have been partially successful in their application, I allow them to recover \$25.00 from their filing fee for this application.

Conclusion

I issue a monetary Order of \$203.84 in the tenants' favour in the following terms which requires the landlords to return that portion of the tenants' security deposit plus interest that remains after their monetary awards are deducted from the security deposit withheld.

Item	Amount
Unpaid Utilities at End of Tenancy	\$226.05
Damage to Rental Unit	100.00
Cleaning	50.00
Less Security Deposit Plus Interest (\$600.00 + \$4.99 = \$604.89)	-604.89
Recovery of Filing Fee for this application	25.00
Total Monetary Order	(\$203.84)

The tenants are provided with these Orders in the above terms and the landlord(s) must be served with a copy of these Orders as soon as possible. Should the landlord(s) 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*.