



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on December 3, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenants confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement effective January 15, 2010 that was set to expire on June 30, 2011 at which time the Tenants were required to vacate the property. Rent was payable on the first of each month in the amount of \$1,400.00 and on January 12, 2010 the Tenants paid \$700.00 as the security deposit. The property was vacated on October 13, 2010.

A move in inspection report was completed January 16, 2010 in the presence of the Tenants and occupant, and the move-out inspection was completed in the absence of the Tenants and occupant. Two opportunities for inspection were provided as well as a final notice to attend.

The Agent testified that they were seeking costs incurred after the Tenants broke their fixed term lease. There was mentioned of e-mails being sent to end their tenancy, which she said the Landlord did not receive; however the Landlord does confirm receiving the registered letter dated September 6, 2010 advising that the Tenants were giving notice to cancel their tenancy effective October 31, 2010. In response the Landlord sent a letter on September 27, 2010, informing the Tenants and the occupant of their obligations to the lease and their option of subletting the unit.

The Agent stated that the occupant had previously refused the Landlord access to the rental unit so she was forced to post notices of entry, as supported by her evidence. The Agent stated that given the history of denying access to the unit the Landlord did not advertise the unit for rent until October 14, 2010 to ensure they were able to gain access to the unit to show prospective tenants.

The Landlord requested to amend her original claim by withdrawing her request for liquidated damages, reducing her claim to change the locks down to \$15.00 from \$112.00, and reducing her claim for vacant dwelling insurance to include only the \$102.00 for December, 2010. Their claim is as follows:

#	Item being claimed	Amount claimed
1	Carpet cleaning – 3 Bedrooms	\$112.00
2	Stove / Refrigerator Cleaning	134.40
3	Windowsill hole repair for 6 windows in Living Room – to repair where the blinds were moved without permission	75.00
4	Garbage Removal – 2 cans	19.25
5	Change Door Locks – estimated cost	15.00
6	Change mailbox lock – Canada Post	28.00
7	CRD water bill – January 22, 2010 to September 17, 2010	92.92
8	Insurance – vacant dwelling (December 1, 2010)	102.00
9	Loss of rent for November & December 2010 (2 x \$1,400.00)	2,800.00

The Tenants testified and confirmed that while they were listed as the Tenants on the lease agreement it was their son who occupied the unit full time. They would stay at the

rental property occasionally when they visited. After a brief discussion and reviewing the items being claimed by the Landlord the Tenants stated that they accept responsibility for items numbered 1 through 7 as listed above. They did not agree with the Insurance being claimed for the vacant dwelling and do not agree with the loss of rent being claimed. They are of the opinion that they provided proper written notice to end the tenancy effective October 31, 2010.

Analysis

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

The Tenants accept responsibility for items numbered 1 through 7 above; therefore I approve the Landlord's claim in the amount of **\$476.57** (112.00 + 134.40 + 75.00 + 19.25 + 15.00 + 28.00 + 92.92).

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 45(2) of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, **and**, is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

Based on the aforementioned I find the Tenants breached the Act by ending the tenancy prior to the end of the fixed term which was June 30, 2011. The evidence

supports the tenancy ended October 13, 2010, when the Tenants vacated or abandoned the rental unit, pursuant to section 44 (1) (d) of the Act. Although the tenancy ended October 13, 2010, the Tenants' obligations to the fixed term contract have not ended.

The Landlord received notification September 8, 2010 of the Tenants' intention to break the lease. That being said, the Landlord did not begin to advertise the unit until after it was vacant, October 14, 2010. The Agent argued that the Landlord had to provide the Tenant 24 hour written notice before entering the unit, after what the Agent states was a few occurrences of refusal to enter. I note 24 hour notice is a requirement of section 29(1) Act and a tenant requesting proper notice of entry is not indicative of a tenant refusing entry to show prospective tenants.

The evidence supports the Landlord began to mitigate their losses on October 14, 2010 and re-rented the unit January 1, 2011. That being said, I find the Landlord failed to mitigate their loss in a timely manner by delaying a month before advertising the unit. Therefore I dismiss the Landlord's request for loss of rent for November 2010, and award the Landlord **\$1,400.00** for one month's loss of rent for December 2010.

The Landlord is seeking \$102.00 for one month of vacant property insurance. I find that the Landlord has chosen to incur these costs which are cost of doing business and cannot be assumed by the Tenants. Providing insurance for the Landlord's property, after the tenancy has ended, is not a tenant's responsibility. Therefore I dismiss the Landlord's request for property insurance, without leave to reapply.

The Landlord was sent the Tenants' forwarding address via e-mail on November 15, 2010. Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case, if we consider the tenancy ended October 13, 2010 or October 31, 2010, the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than November 30, 2010. The Landlord filed his application November 29, 2010, and has met the requirements of the Act.

The Landlord has primarily been successful; therefore I award recovery of the **\$50.00** filing fee.

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

Move out deficiencies and Water utility costs (Items 1 thru 7 above)	\$476.57
Loss of Rent for December 2010	1,400.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	\$1,926.57
Less Security Deposit of \$700.00 plus interest of \$0.00	- 700.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,226.57

Conclusion

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 **\$1,226.57**. The order must be served on the respondent Tenants and is enforceable through the Provincial Court 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: April 06, 2011.

Residential Tenancy Branch