



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, FF

Introduction

This hearing dealt with the Landlords' Application for a monetary order for damage to the rental unit, for unpaid rent, to keep all or part of the security deposit and to recover the cost of the filing fee from the Tenants.

One Landlord and the Tenants and their witness appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

Issue(s) to be Decided

Have the Tenants breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the Landlords to an Order for monetary relief and to recover the filing fee?

Background and Evidence

This month to month tenancy began on January 15, 2010, ended on December 21, 2010, monthly rent listed in the tenancy agreement was \$1,300.00 and the Tenants paid a security deposit of \$650.00 on or near the beginning of the tenancy. The Landlord explained that during the course of the tenancy, she agreed to reduce the Tenants' monthly rent to \$1,200.00.

Included in their amended Application served on the Tenants, the Landlords' monetary claim is as follows:

December 2010 rent	\$1,200.00
Water bills	\$790.90
Paint/repair of hallways	\$200.00
Painting of bedroom	\$200.00
Carpet cleaning	\$89.60

General cleaning (6 hrs.)	\$180.00
Filing fee	\$50.00
Total	\$2,710.50

Landlords' relevant evidence included:

1. Tenancy Agreement;
2. Carpet care receipt;
3. An invoice from the Landlord's husband for repair, painting and cleaning, in the amount of \$580.00;
4. Water bills;
5. 10 Day Notice to End Tenancy;
6. An End of Tenancy statement, signed by the female Tenant, agreeing that the Tenants were responsible for 21 days of rent for December in the amount of \$812.90, carpet cleaning for \$200.00, general cleaning for \$180.00, paint/repair of hallway wall for \$200.00, water bills for \$585.05 through November 26 and bedroom paint repair for \$200.00;

The Landlord submitted that the Tenants were issued a 10 Day Notice to End Tenancy for Unpaid Rent of \$1,200.00, on December 10, 2010, which resulted in the Tenants vacating the rental unit on December 21, 2010.

The Landlord submitted that the Tenants agreed to compensate the Landlords in the amounts listed in the End of Tenancy statement, which was demonstrated by the female Tenant's signature, and to allow the Landlords to retain the security deposit in partial satisfaction of the amount claimed.

The Landlord stated that she has amended her claim for carpet cleaning as the total cost was actually \$89.60 instead of the estimated \$200.00 listed on the End of Tenancy statement, as well as amended her request to include the full rent for December 2010, instead of 21 days, and for an additional amount in the water bill through the end of the tenancy, now totalling \$788.98.

The Tenants and their Agent agreed that the Tenants owed rent for 21 days in December in the amount of \$812.90, the water bill for \$788.98 and \$89.60 for the carpet cleaning, for a total of \$1,691.48.

As the Tenants agreed this amount was owed by the Tenants, the issues left to consider were whether the Tenants were responsible for the full rent for December

2010, painting/repairing of the hallway wall for \$200.00, painting of the bedroom for \$200.00 and general cleaning of \$180.00.

The Landlord testified that due to the dent by the Tenants in the hallway wall, the Landlords were required to fill in the dent and repaint the entire hallway. Additionally, the Landlord stated that the stains left by the Tenants on the bedroom wall required the Landlords to repaint the entire bedroom.

As to the cleaning, the Landlord testified that the six hours of cleaning was necessary just to make the rental unit habitable for the next tenants, but that more hours were needed.

In response, the Tenants' witness, the female Tenant's father, stated that the Tenants were never supplied with a list of items which needed cleaning and that the rental unit was thoroughly cleaned by his wife and did not need further cleaning.

The witness further submitted that it was not necessary to repaint the hallway or bedroom, and that the Landlord's doing so was "overkill" and an excessive reaction by the Landlords.

The male Tenant stated that the dent was merely a scratch and did not require the excessive amount of repair and repainting. The male Tenant further stated he was not in attendance at the move out inspection and did not agree to some of the items listed on the end of tenancy form.

The female Tenant confirmed that the floors and cleaning were done by the Tenants and did not need the amount listed by the Landlords.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the Landlords to prove damage or loss.

As to the issue of full rent for December 2010, under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

As such, I find that the Tenants were obligated to pay rent for December 2010, under the Act and tenancy agreement, and did not do so, which resulted in the Tenants being issued a 10 Day Notice to End Tenancy by the Landlords.

Whether the Tenants vacated the rental unit before the end of the month or not, the Tenants were required to pay rent for the month of December.

I therefore find the Landlords have established a monetary claim in the amount of **\$1,200.00** for unpaid rent for December 2010.

As to the Landlords' claim for general cleaning for \$180.00, painting of the bedroom for \$200.00 and painting and repairing of the hallway for \$200.00, totalling \$580.00, I find that Tenants agreed to this amount as confirmed by the female Tenant's signature on the End of Tenancy statement. Under the principle of joint and several liability, the Tenants were equally responsible for the obligations of the tenancy and the female Tenant agreeing to the costs in the Statement obligated the male Tenant equally. I therefore find the Landlords are entitled to these costs of \$580.00.

As the Landlords were successful in their Application, I award them the filing fee of \$50.00.

Conclusion

I find the Landlords have established a monetary claim in the amount of **\$2,708.58**, which includes unpaid rent for December 2010, in the amount of \$1,200.00, general cleaning for \$180.00, painting of the bedroom for \$200.00 and painting and repairing of the hallway for \$200.00 as agreed to by the Tenants in the End of Tenancy statement, \$788.98 for unpaid water bills and \$89.60 for the carpet cleaning, as agreed to by the Tenants in the hearing and the filing fee of \$50.00.

I **allow** the Landlords to retain the security deposit of \$650.00 in partial satisfaction of the claim and I **grant** the Landlords an order under section 67 for the balance due of **\$2,058.58**.

This order 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: June 10, 2011.

Residential Tenancy Branch