Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNSD

For the landlords – MND, MNSD, MNR, MNDC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together. The tenants seek to recover double their security deposit. The landlords seek a Monetary Order to recover unpaid rent, for damage to the rental unit, for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act*), regulation or tenancy agreement. The landlords also seek an Order to keep the tenants security deposit and to recover their filing fee.

I am satisfied that both Parties have been served with a copy of the Application and Notice of Hearing pursuant to s. 89 of the *Act*.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Are the tenants entitled to recover double their security deposit?
- Are the landlords entitled to a Monetary Order to recover unpaid rent?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?

- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords entitled to keep the tenants security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on July 01, 2006. This was a verbal tenancy agreement between the Parties. The tenants paid a monthly rent at the end of the tenancy of $1,425.00. The tenants paid a security deposit of $700.00 on July 01, 2006.

The male tenant testifies that they gave the landlord one month notice to end their tenancy and the effective date of this Notice was October 31, 2010. The tenant states they moved out on November 03, 2010 and had an arrangement with the landlord to go back to clean up the property and remove all their belongings by November 17, 2010. The tenant states they gave the landlords their forwarding address in writing on January 13, 2011 and have provided a copy of this letter in evidence. The tenant testifies that the house was left in a clean condition at the end of their tenancy and there was no damage with the exception of some normal wear and tear after a six year tenancy. The tenant states the landlord has not returned their security deposit to them within the 15 allowable days and they seek to recover double their deposit to the sum of $1,400.00.

The male landlord testifies that the tenants did not move completely from the rental house until November 17, 2010 and did not pay rent for November. The landlord testifies that he could not advertise the house until after the tenants had moved out as the yard was full of cars, construction material, car parts and boxes. The landlord testifies that the tenants continued to do garage sales from the property through November, 2010 and the cleanup of the house and property was not completed until November 17, 2010. The landlord testifies that due to this they lost a months' rent for November, 2010 and seek to recover this sum of $1,425.00 from the tenants.

The landlord states when they got into the property they found the tenants had not left it in a reasonably clean condition; There was mould around the windows, the blinds needed to be repaired, the garage was also left dirty and there was burnt wood left in a fire pit, car batteries had leaked acid which contaminated the soil, there were oil leaks from all the old cars and grease on the driveway and the tenants had not cut the grass. The tenants had also left an old trailer, tires and car parts in the back yard. The landlord testifies that the male tenant said he could have the tires and car parts but he states they were worthless and it was just because the tenant did not want to remove them. The landlord testifies that they had to complete this clean up before they could start to advertise the unit for rent on December 06, 2010 and the unit was re-rented on February 01, 2011. The landlord states they seek to recover a loss of rental income for December, 2010 from the tenants to the sum of $1,425.00.

The landlord has provided a copy of a letter sent to the tenants asking him to move the cars and clean up the driveway and another letter sent concerning these issues after the tenancy ended.

The landlords seek $750.00 for the time spent dealing with the contamination, cutting the grass (which was the tenants responsibility), removing the trailer, cleaning the garage and house. The landlord also states the locks had to be changed as the tenants did not return all the sets of keys given to them. The landlord state they did most of this work themselves with the help of a friend who they paid and the new tenants moving in also completed some additional cleaning which they were reimbursed for.

The tenant disputes the landlords' claims. The tenant testifies that any oil on the property was left from the landlords' truck when he came to visit the property and states the landlord did not complete either a move in or a move out condition inspection with the tenants. The tenant states at the start of their tenancy there was black mould around the window frames as these were single pan windows and there was no furnace in the house. This mould never came off throughout their tenancy.

The tenant testifies that at the end of the tenancy they cleaned the house and the property and some items left at the property belonged to the landlord. The tenant states the only thing left in the yard was a burning barrel full of ash. He states the garage was left clean no oil was left and he did not leave a trailer at the property. The tenant states he did leave some tires and some car parts which he had given to the landlord. The tenant states at the start of the tenancy they were only given a backdoor key and never had a front door key until a time when they had locked themselves out of the house and the female landlord gave them a set of keys to get in. He states these were returned to her shortly after.

The tenant agrees that it was his responsibility to cut the grass but states for the last few months the landlords' mower did not work. He states they have viewed the property months after they left and there is nothing to show that the landlord had cut the grass as he stated. The tenant states his car batteries did not leak and there is no contamination left in the ground from these. The tenant states he power washed the driveway at the end of their tenancy so any oil stains would be from the landlords' vehicle.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants claim to recover double his security deposit; Section 38(1) of the *Act* says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6) of the *Act*, the landlord must pay double the amount of the security deposit (plus any interest accrued on the original amount) to the tenant.

I find that the landlords did receive the tenants forwarding address in writing by January 13, 2011. As a result, the landlord had until January 28, 2011 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the tenants security deposit and did not file an application to keep it until March 24,

2011. Consequently, pursuant to section 38(6) of the *Act*, the landlord must pay the tenants double the amount of their security deposit to the sum of **$1,400.00**.

With regard to the landlords claim for unpaid rent for November, 2011; When a tenant gives the landlord a Notice to End Tenancy, the tenants must move out of the rental unit on the effective date of that notice and must leave the rental unit clean and have removed all their belongings by that date. In this matter both parties agree the tenants notice was effective on October 31, 2010 and they handed back the key on November 03, 2010. However, the tenants did not clean or remove all their belongings from the property until November 17, 2010 and did not pay any rent for November, 2010. Therefore I agree this would have made it difficult for the landlord to re-rent the property for November, 2010. Therefore, the landlords claim for unpaid rent for November is upheld and the landlords are entitled to recover unpaid rent from the tenants to the sum of **$1,425.00.**

With regard to the landlords claim for a loss of rental income for December, 2010; The landlords have argued that they could not re-rent the unit due to the additional work they had to do to the unit to bring it up to a condition that they could re-rent it. However, the landlords have provided no evidence to show what work was required or how long this work took. The landlords have not shown how they mitigated their loss in advertising the unit from November 17, 2010 in order to attempt to get it re-rented for December 01, 2010 and they did not start to advertise the unit until December 06, 2010. Consequently, as the landlords have provided insufficient evidence to show how they mitigated their loss pursuant to s. 7(2) of the Act this section of their application is dismissed.

With regard to the landlords claim for damage to the rental unit; Sections 23 and 35 of the Act say that a landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in condition inspection report is to provide evidence of the condition of the rental unit at the beginning of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

In this matter the tenant has disputed that he left the unit unclean at the end of the tenancy including the yard. To look at this matter in further depth I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

1. Proof that the damage or loss exists
2. Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Having considered the testimony of both Parties in light of the lack of any documentary evidence I find the landlords has shown that in December 2009 there was a letter sent to the tenants with a notice to clean up the driveway giving them thirty days to clean up the property including the balcony. This notice also asks the tenanst not to park cars around the driveway or on the front lawn. However, since that time there is no evidence that any further warning letters have been issued by the landlords to the tenants concerning this matter until

after the tenants moved out. Therefore I cannot deduce from this that the tenants did not comply with the landlords requests at that time.

Therefore, it is my decision that the landlords have not met the burden of proof in this matter as I have no evidence before me with either an inspection report or photographs of the condition of the property, I have no evidence before me with respect to the actual or even estimated amount costs for any of the work such as removal of a trailer, or tires, clean up of contamination, changing the locks, cutting the grass or any cleaning fees paid to a third party and therefore, I find that the landlords have failed to satisfy elements 1, 2 and 3 of the above test, and therefore, the landlord's claim for damages is dismissed.

The landlords have applied to keep the tenants security deposit. As the tenants have been awarded double their security deposit this amount will be offset against the money owed to the landlord in unpaid rent.

As the landlord has been successful in part of their claim I find they are entitled to recover half their filing fee of $25.00 pursuant to s. 72(1) of the Act. A Monetary Order has been issued to the landlord for the following amount:

Double the security deposit	$1,400.00
Total amount owed to the tenants	$1,423.00
Unpaid rent for November, 2010	$1,425.00
Portion of filing fee owed to the landlord	$25.00
Total amount owed to the landlord	$1,500.00
Total amount owed to the landlord	$77.00

Conclusion

I HEREBY FIND in favor of the tenants claim. The tenants are entitled to double their security deposit plus accrued interest on the original amount to the sum of $1,423.00.

I HEREBY FIND in partial favor of the landlord's monetary claim to the sum of $1,500.00.

The tenants Monetary award has been offset against the landlord Monetary award therefore a copy of the landlord's decision will be accompanied by a Monetary Order for **$77.00** pursuant to s. 67 of the Act. The order must be served on the respondents 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: June 16, 2011.

Residential Tenancy Branch