



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord – MNR, MNSD, MNDC, FF

For the tenant – MNDC, MNSD, FF

Introduction

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

I am satisfied that both Parties were properly served pursuant to s. 89 of the *Act* with the other Parties application and notice of this hearing.

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

- Is the landlord entitled to a Monetary Order to recover any unpaid rent?

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

Background and Evidence

Both parties agree that this tenancy started on November 01, 2010. This was a fixed term tenancy which was due to expire on October 31, 2011. Rent for this unit was \$1,250.00 plus \$20.00 for parking and was due in advance on the first day of each month. The tenants paid a security deposit of \$525.00 on October 15, 2010.

The landlords' application

The landlord testifies that the tenants gave notice to end their tenancy on January 31, 2011 and moved from the unit on February 28, 2011. The landlord testifies that they advertised the unit for rent on Craig's List and in the newspapers and showed the unit as much as possible however it was not re-rented until April 01, 2011 at a reduced rent of \$1,200.00. The landlord seeks to recover a loss of rental income for March, 2011 plus the difference in the rent of \$50.00 up until the end of the fixed term of the tenancy to a sum of \$1,550.00.

The landlord testifies that there is a clause in the tenancy agreement which states the landlord will charge the tenants the sum of \$300.00 in liquidated damages if the tenants end the tenancy before the end of the fixed term. The landlords also seek to recover this from the tenants.

The landlord testifies that the tenants agreed in writing that the landlord may deduct \$110.00 for the carpet cleaning, \$30.00 for drape cleaning and the \$300.00 in liquidated damages for breaking the lease. The landlord claims the tenants did not clean the carpets or the drapes at the end of the tenancy and left some staining on the carpets.

The tenant attending does not dispute that she agreed the landlord could deduct the sum of \$440.00 from their security deposit for carpet and drape cleaning and the \$300.00 lease break fee. The tenant states she agreed to this only because she wanted to leave her tenancy on good terms with the landlord; however the tenant testifies that the reason she had to break the lease was because their unit was located over the laundry room and this caused their unit to overheat especially the master bedroom. The tenant states the four months that they lived in the unit the master bedroom was unusable. The landlords' maintenance man came to look at the situation and told her that the only solution was to move out. The tenant testifies that no prospective tenants came to view her unit between January 31 and February 28, 2011 as the landlord had multiple vacancies at that time. The tenant disputes that they owe rent to the landlord or any other sums for liquidated damages.

The tenant's application

The tenants seek to recover compensation from the landlord for the loss of the use of the master bedroom. The tenant attending states this is a three bedroom suite with a living room. She has calculated that with the loss of one of the rooms the landlord should compensate them to the sum of \$1,250.00. The tenant has calculated the total rent paid and divided it by four then multiplied this by the four months spent living in the unit with the loss of this room.

The tenant testifies that she was not offered alternative accommodation by the landlord and repeatedly made complaints to the landlord about the excessive heat but was simply told it could not be rectified.

The landlord testifies that after the tenant complained about the excessive heat in her unit they had a specialist look at the problem to try to track down the source of the heat. She states they were told as the main hot water pipe was located under the unit the unit did get to hot. The landlord testifies that they did offer the tenant other suites one of which had four bedrooms. However, the tenant declined these offers and gave them Notice to End Tenancy for personal reasons.

The landlord testifies that she did advertise the suite and agrees she also had other suites available at that time for rent. In April she rented three suites the first one being the tenant's suite.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords claim for unpaid rent and loss of rental income; in this matter I find that the tenants arguments as to why they had to end their tenancy more compelling. The tenant was unable to use the master bedroom of the unit due to the problem with excessive heat. The landlord agrees this was a problem and could not easily be rectified. I further find the landlord has provided no corroborating evidence to support their claim that the tenants were offered alternative accommodation. Therefore, I find the tenants were entitled to end the tenancy as the landlord had breached a fundamental term of the tenancy agreement in not providing living accommodation suitable for the tenants to live in. Due to this I find the tenants are not liable for any further rent due to the landlord. I further find the landlord is not entitled to charge the tenants for the liquidated damages of \$300.00 even though the tenants agreed to this deduction from their security deposit.

As the tenants did agree the landlord could deduct the sum of \$110.00 for carpet cleaning and \$30.00 for drape cleaning from their security deposit. I find the landlord is entitled to keep this and must return the balance of the deposit to the tenants of **\$485.00** pursuant to s.38 of the *Act*.

With regard to the tenants claim for compensation of \$1,250.00 for the loss of the use of their master bedroom for four months; In light of the circumstances I find this is not an unreasonable request by the tenants and I further find their calculations in determining an amount of compensation to be fair and just. Therefore I find the tenants are entitled to compensation from the landlord of **\$1,250.00** pursuant to s. 67 of the *Act*.

As the tenants have been successful with their claim I find they are entitled to recover their **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the Act. As the landlord has been unsuccessful they must bear the cost of filing their own application.

The tenants will receive a Monetary Order for the following amount:

Compensation for loss of a bedroom	\$1,250.00
Return of the balance of the security deposit	\$485.00
Subtotal	\$1,735.00
Plus filing fee	\$50.00
Total amount due to the tenants	\$1,785.00

Conclusion

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,785.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlord is entitled to keep the sum of **\$140.00** from the tenant's security deposit. The remainder of the landlords' application is dismissed without leave to reapply.

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: July 05, 2011.

Residential Tenancy Branch