

DECISION

Dispute Codes MNSD, FF

Introduction

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

- 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 her 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 parties agreed that the tenants received a copy of the landlord's dispute resolution hearing package that the landlord sent by registered mail on February 19, 2011. The tenants also confirmed receiving the landlord's evidence package. I am satisfied that the landlord served these documents in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to retain the tenants' security deposit? Is the landlord entitled to recover the filing fee for her application from the tenants?

Background and Evidence

This one year fixed term tenancy commenced on February 1, 2010. The tenancy was scheduled to end by February 1, 2011. Monthly rent was set at \$1,000.00, payable in advance on the first of the month. The landlord continues to retain the tenants \$500.00 security deposit paid on or about January 7, 2010.

The tenants testified that they obtained the landlord's oral agreement to end their tenancy and vacate the rental unit by February 8, 2011, as they needed extra time before they could move into their new residence. The tenants said that the landlord initially agreed to their proposal to pay seven days of rent for February 2011. However, they maintained that the landlord changed her mind on this arrangement when she realized that she could not rent the premises to another tenant until February 15, 2011. The landlord applied for authorization to retain the tenants' \$500.00 security deposit to compensate her for the losses she encountered from this tenancy. She requested that the tenants pay the difference between a full month's rent of \$1,000.00 and the total rental amounts she received from the new tenants for February 2011 (i.e., \$425.00) and from the tenants for the first seven days of February 2011 (i.e., \$249.97). She testified that she rented the premises to new tenants at a rate of \$1,050.00 as of February 15,

2011. However, when the new tenants saw the condition of the rental unit, they refused to move into the rental unit until the premises were professionally cleaned. The landlord said that she felt compelled to rebate the new tenants \$100.00 from their February 2011 rent in order to pay for their hotel room while the rental unit was being cleaned and repaired. The landlord asked for reimbursement of the \$325.03 she lost (\$1,000.00 - \$674.97 = \$325.03) in rent as a result of the tenants' decision to vacate the rental premises on February 8, 2011, instead of by February 1, 2011.

The landlord also applied for cleaning and painting costs of \$350.00, repair of a key fob of \$25.00, and cleaning supplies of \$12.45. She submitted receipts regarding these expenditures, photographs of the condition of the rental unit at the end of this tenancy, and a copy of a February 8, 2011 joint move-out condition inspection report that the tenants refused to sign. The parties agreed that the landlord sent the tenants a copy of the move-out inspection report. Although the landlord's mother and the tenants walked through the rental premises when the tenants commenced their tenancy, the landlord did not prepare or send a move-in condition inspection report.

Analysis

Section 44(1)(c) of the *Act* requires that a mutual agreement between parties to end a tenancy must be in writing. Section 52 of the *Act* specifies that a notice to end a tenancy must be in writing.

Based on the evidence presented, I find that the tenants did not comply with the *Act* in ending their tenancy on the basis of an oral agreement that they believe they made with the landlord near the end of December 2010. They said that they exchanged messages with the landlord on a social media site, but agreed that they never provided written notice nor did they receive the landlord's written agreement to end their tenancy on February 8, 2011.

Section 44(3) of the *Act* establishes that in the absence of a requirement to vacate the rental unit by the date identified as the end date of a fixed term tenancy, the parties are deemed to have renewed the tenancy agreement as a month-to-month tenancy on the same terms. Whether or not there was a provision requiring the tenants to vacate the premises by February 1, 2011, the tenants continued their tenancy in February 2011 without written permission to do so. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. On this basis, I find that the landlord is entitled to compensation for losses she incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants paid only \$249.97 in rent for February 2011. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for February 2011 through advertising on Craigslist. She was successful in re-renting the premises to a new tenant for part of February 2011. I accept her undisputed evidence that she obtained a total of \$425.00 from the new tenant for February 2011 because she had to rebate \$100.00 of the original amount received from the new tenant for February 2011 in order to keep her as a tenant when the new tenant viewed the condition of the rental unit after the end of this tenancy. I am satisfied that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the tenants' losses.

I allow the landlord to keep \$325.03 from the tenants' security deposit to compensate the landlord for her rental losses for February 2011.

Based on the undisputed evidence from the landlord, I allow the landlord to keep \$25.00 from the tenants' security deposit to repair one of the tenants' key fobs at the end of this tenancy.

The parties provided conflicting evidence regarding whether the rental unit was in similar condition at the beginning and end of this tenancy. The landlord testified that the rental unit was filthy at the end of this tenancy. She provided photographs and a condition inspection report to confirm her claim that the tenants did not leave the rental unit in reasonably clean condition as required by section 37(2) of the *Act*. She said that the rental unit required considerable cleaning which had to be performed before the new tenants agreed to commence their tenancy.

The male tenant testified that the rental unit, especially the carpet, was not clean when they commenced their tenancy. He testified that the premises were in similar or better condition as when they occupied the rental unit.

When disputes 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. The

parties agreed that no joint move-in condition inspection report was issued after the tenants and the landlord's mother "walked through" the rental unit at the start of this tenancy. Although a detailed move-out condition inspection report was filed and sent to the tenants, section 24(2)(c) of the *Act* establishes that the absence of a joint move-in condition inspection report limits the landlord's eligibility for a monetary award for damage to the rental unit arising out of this tenancy.

I find that the tenants did not comply with section 37(2) of the *Act* which requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties agreed that the tenants commenced cleaning the rental unit when the landlord objected to the condition of the rental unit at the joint move-out condition inspection. However, the parties also agreed that the female tenant discontinued her efforts to clean the premises when the landlord made it clear that she had no intention of returning all of the tenants' security deposit if the tenants completed that cleaning. The female tenant conceded that the rental unit was not "immaculate" when they vacated the rental unit and admitted that there were "a few things" that were not cleaned, including some of the cabinets. The tenants also admitted that they caused "a few dings" to the walls that were not there before.

Based on the oral, written and photographic evidence of the parties, I find on a balance of probabilities that the tenants did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit "reasonably clean" at the end of their tenancy. Some cleaning was likely required by the landlord after the tenant vacated the rental unit. The landlord's photographs show that the tenants did not do an adequate job of cleaning the rental premises at the end of this tenancy, a conclusion that is at least partially supported by the tenants' own oral testimony. For that reason, I find that the landlord is entitled to a monetary award of \$60.00 for general cleaning that was required at the end of this tenancy, plus \$12.45 in cleaning supplies she purchased. In coming to this determination, I note that the landlord was unable to identify a specific figure for the cleaning portion of the \$350.00 bill she paid for cleaning and painting. I select \$60.00 as the appropriate amount for cleaning on the basis of the oral, written and photographic evidence submitted, as I find that four hours of cleaning would have been required at a rate of \$15.00 per hour.

As the landlord has been successful in her application, I allow her to recover her \$50.00 filing fee for this application from the tenants.

Conclusion

I allow the landlord to retain \$460.03 from the tenants' security deposit on the following terms:

Item	Amount
Landlord's Entitlement to Lost Rent for February 2011	\$325.03
Key Fob Repair	25.00
Cleaning	60.00
Cleaning Supplies	12.45
Less Security Deposit	-500.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	-\$27.52

I issue a monetary Order in the tenants' favour requiring the landlord to return \$27.52 from the tenants' security deposit to the tenants forthwith.

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