DECISION

Dispute Codes MND, MNR, FF, MNSD, O

Introduction

This hearing dealt with applications from the landlords and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlords applied for a monetary order for unpaid rent and for damage to the rental unit pursuant to section 67. The tenants applied for authorization to obtain a return of double their pet damage and security deposits pursuant to section 38. Both parties applied to recover their filing fees for their applications from the other party.

Preliminary Matters – Service of Documents

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The male landlord who attended (the landlord) testified that he handed the female tenant a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on February 3, 2011. The male tenant testified that the female tenant was not handed this Notice on February 3, but was handed it on March 6, 2011. The testimony in this regard from the parties was contradictory and varied from their agreement that the tenants vacated the rental premises on January 31, 2011.

The male tenant confirmed that the landlord who attended the hearing handed the female tenant a copy of the dispute resolution hearing package on March 11, 2011. I am satisfied that the landlords served the tenants with the dispute resolution hearing package in accordance with the *Act*.

At one point in the hearing, the landlord testified that he handed the female tenant a copy of his evidence package on March 8, 2011. When I noted that the landlord had not sent his evidence package to the Residential Tenancy Branch until June 17, 2011, one business day before this hearing, the landlord changed his testimony to say that he gave his evidence package to the female tenant on June 30, 2011. Since this hearing occurred on June 20, 2011, that too was incorrect. The male tenant testified that he has not received any written evidence from the landlord. Despite the errors in the landlord's testimony in this regard, I decided to include the landlords' written evidence in my consideration of the landlords' application because that evidence was comprised of documents exchanged between the parties regarding this tenancy.

The male tenant first testified that he sent a copy of the tenants' dispute resolution hearing package to the landlords' real estate agent on March 6, 2011 by certified mail. He later corrected his testimony to say that this was sent by registered mail on March 9,

2011, although he did not have a Canada Post Tracking Number to confirm this mailing. The male tenant also testified that he posted a copy of the tenants' dispute resolution hearing package on the door of the dispute residence. The landlord said that he has not received a copy of the tenants' dispute resolution hearing package.

Neither of the methods used by the tenants to serve the landlords with their dispute resolution hearing package are allowed under section 89(1) of the *Act*. Since the tenants have not served the landlords with their application in accordance with the *Act*, at the hearing I dismissed the tenants' application for dispute resolution with leave to reapply.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to a monetary award for damage arising out of this tenancy? Are the landlords entitled to recover their filing fee for this application from the tenants?

Background and Evidence

This one-year fixed term tenancy commencing on March 1, 2010 was scheduled to end on March 1, 2011. Monthly rent was set at $2,000.00, payable in advance on the first of the month. The landlords continue to hold a $1,000.00 security deposit and a $1,000.00 pet damage deposit, both paid on January 18, 2010.

The landlord testified that the tenants notified them they were planning to end their tenancy early by an email in mid-January 2011. The parties agreed that the tenants vacated the rental unit on January 31, 2011.

The landlords applied for a monetary award of $2,000.00 for unpaid rent for February 2011 and $900.00 for damage arising out of this tenancy. The landlord gave undisputed testimony that he conducted a joint move-in condition inspection with the tenants when they commenced their tenancy, although he did not prepare a report regarding that inspection. The landlord said that the tenants told him when they moved in that it was in immaculate condition, as the rental unit was new. The landlord said that he did not conduct a formal joint move-out inspection of the premises when the tenants vacated the rental unit. He produced no written report at the end of the tenancy regarding the condition of the rental unit.

The landlord referred to February 14, 2011 and February 15, 2011 emails exchanged with the tenants in his claim that the tenants agreed that they caused $214.35 in damage during their tenancy. The male tenant did not dispute the contents of these emails which were discussed and considered during this hearing.

Analysis – Landlord's Application for a Monetary Award for Damage

Section 37(2) of the *Act* requires a tenant to "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." The parties entered conflicting evidence regarding the condition of the rental unit at the beginning and end of this tenancy. The male tenant maintained that many of the items in the landlords' claim for damage were left in the same condition or better than when the tenancy began.

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. Section 36(1) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

> ***36*** *(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*
>
> > *(a) does not comply with section 35 (2) [2 opportunities for inspection],*
> >
> > *(b) having complied with section 35 (2), does not participate on either occasion, or*
> >
> > *(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations...*

Similar provisions are established in section 24 of the *Act* with respect to joint move-in condition inspections.

In this case, there is undisputed evidence that any "walk throughs" that did occur at the beginning and end of this tenancy did not result in the landlords' issuance of the required joint move-in or move-out condition inspection reports to the tenants.

Since I find that the landlords did not follow the requirements of the *Act* regarding the move-in and move-out condition inspection reports, I find that the landlords' eligibility to claim against the security deposit for damage arising out of the tenancy is limited.

Although the landlords applied for a monetary award for damage arising out of this tenancy, they did not apply to retain the tenants' security deposit.

Based on the oral, written, email 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 and undamaged except for reasonable wear and tear." By the tenants' admission in the email of February 15, 2011, the tenants conceded that they were responsible for $214.35 in damage during their tenancy. I allow a monetary award of $214.35 for this undisputed damage to landscape lighting, blinds and a heat vent cover. To this amount, I add a monetary award of $80.00 for cleaning of the backyard, half that claimed by the landlord, and $40.00 for replacement of the shower bar. I dismiss the remainder of the landlords' claim for damage because of the landlords' failure to comply with the requirements of the *Act* with respect to move-in and move-out inspection reports and because the landlords have not demonstrated to the extent necessary that they are entitled to a monetary award for these items.

As the landlords were partially successful in their application, I allow them to recover $25.00 from their application fee from the tenants.

The parties agreed that the landlords continue to hold the tenants' $1,000.00 security deposit and $1,000.00 pet damage deposit paid on January 18, 2010 plus interest. Over that period, no interest is payable. Although the landlords' application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain $359.35 from the tenants' security deposit in partial satisfaction of the monetary award. I reduce the value of the retained portion of the tenants' security deposit from $1,000.00 to $640.65.

Conclusion

I dismiss the tenants' application for dispute resolution with leave to reapply.
I issue a monetary award in the landlords' favour in the following terms which enables the landlords to recover for damage arising out of this tenancy and part of their filing fee for this application.

Item	Amount
Landscape Lighting	$134.35
Blinds	65.00
Heat Vent Cover	15.00
Shower Bar from Curtain	40.00
Backyard Cleaning	80.00
Recovery of Filing Fee for this application	25.00
Total Monetary Award	**$359.35**

I order the landlords to retain $359.35 from the tenants' security deposit. The present value of the remaining portion of the tenants' security deposit is $640.65. The landlord also continues to hold $1,000.00 from the tenants' pet damage deposit.

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*.