



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, to keep all or part of the pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to the female Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 9, 2011. Mail receipt numbers were provided in the Landlord's verbal testimony. The female Tenant is deemed to be served the hearing documents on March 14, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*. The Landlord testified she did not know the male Tenant's address so she sent his hearing documents in the same envelope that was sent to the female Tenant.

The Landlord's Agent (referred to as Landlord in this decision) appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

The parties entered into a month to month tenancy that began on September 15, 2010. Rent was payable on the first of each month in the amount of \$1,500.00 and on September 4, 2010 the Tenants paid \$750.00 as the security deposit.

The Landlord advised that when the Tenants failed to pay the balance owed for November of \$200.00 and the January 2011 rent of \$1,500.00 they issued a 10 Day Notice. They attended a previous dispute resolution hearing on February 1, 2011 where the Landlord was granted an Order of Possession. During that hearing the Tenant confirmed that they owed \$200.00 for November 2010 rent and \$1,500.00 for January 2011 rent. The Landlord advised that no rent was paid for February 2011 either.

She advised that after they served the Tenants with the Order of Possession the Tenants continued to occupy the rental unit. Then on February 21, 2011 the Landlord received an e-mail advising them they Tenants had vacated the property and the keys were in the mailbox. Upon inspection of the rental property the Landlords noticed the Tenants had taken the downstairs fridge when they moved out. They e-mailed the Tenants about this right away and later received an e-mail saying they returned the fridge by leaving it outside of the front of the house at 6:00 p.m. When the Landlords attended the unit there was no fridge anywhere on the property.

The Landlords are seeking monetary compensation in the amount of \$4,850.00 which is comprised of the following:

- \$3,200.00 for unpaid rent (\$200.00 Nov 2010; \$1500.00 Jan 2011; \$1500.00 Feb 2011); and
- \$900.00 for the cost of the fridge taken by the Tenants. The fridge was approximately 4.5 years old and has not yet been replaced by the Landlords; and
- \$750.00 to have the carpets cleaned which was done however the Landlord did not have a receipt for the work; to have the garbage removed from the kitchen, and to replace the mailbox key. The key has been replaced however no receipt was obtained.

Analysis

I have carefully considered the aforementioned and the documentary evidence which consisted of copies of five e-mails between the Landlord and the female Tenant from January 14, 2011 to March 3, 2011.

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlords have applied for a monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*. In this case only one of the two Tenants has been personally served with the Notice of Direct Request Proceeding document. Therefore, I find that the request for a monetary Order

against both Tenants must be amended to include only the female Tenant who has been properly served with Notice of this Proceeding. As the second Tenant has not been properly served the Application for Dispute Resolution as required the monetary claim against the male Tenant is dismissed without leave to reapply.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 26 of the Act provides that a tenant must pay rent when it is due in accordance with the tenancy agreement. The evidence supports the Tenants did not pay \$200.00 for November 2010 rent and did not pay anything towards the January or February 2011 (2 x \$1500.00) rent even though they had possession of the unit up to February 21, 2011. Based on the aforementioned I find the Landlord has met the burden of proof and I approve his claim in the amount of **\$3,200.00** for unpaid rent.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

The evidence supports the Tenants took the Landlord's fridge when they vacated the property. The female Tenant alleges in one of her emails that she returned the fridge, however given that she did not provide prior notice to the Landlord and then alleges that she left it outside, in an unsecured area; I accept the Landlord's testimony that when they attended the rental unit there was no fridge there. Therefore the evidence supports the Landlord has suffered a loss of his fridge due to the Tenant's actions.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award “nominal damages” which are a minimal award. These damages may be awarded where there has been a loss and there is insufficient evidence to support that actual amount. These awards are an affirmation that there has been an infraction of a legal right. In this case I find that the Landlord is entitled to nominal damages for the loss of his fridge, which still had about 70% of its useful life remaining. Based on the aforementioned I award the Landlord **\$600.00** as nominal damages for the loss of his fridge.

The remainder of the Landlord’s claim pertains to claims for carpet cleaning, removal of garbage, and to have the mailbox key replaced. In the absence of receipts and a move-out inspection report, I find there to be insufficient evidence to support this claim, therefore this portion of the Landlord’s claim is dismissed without leave to reapply.

The Landlord has been primarily successful with his application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants’ security deposit as follows:

Unpaid Rent for Nov 2010, Jan 2011, Feb 2011	\$3,200.00
Nominal damages for Fridge	600.00
Filing fee	<u>50.00</u>
SUBTOTAL (Monetary Order in favor of the Landlord)	\$3,850.00
Less Security Deposit of \$750.00 plus interest of \$0.00	-750.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$3,100.00

Conclusion

A copy of the Landlord’s decision will be accompanied by a Monetary Order for **\$3,100.00**. The Order must be served on the respondent Tenant 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 21, 2011.

Residential Tenancy Branch