



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords to obtain a Monetary Order for unpaid rent and for damage to the rental unit, an Order to keep all or part of the security and pet deposits and to recover the cost of the filing fee.

I am satisfied that the tenants were adequately served the hearing documents, by the landlord in accordance with section 89 of the *Act*. The landlords amended their application on June 30, 2011 and also served the tenants with the amended application.

The female landlord appeared, gave affirmed testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- 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 keep the tenants security deposit?

Background and Evidence

This month to month tenancy started on August 31, 2010. Rent for this unit was \$1,100.00 per month plus \$65% share of the utilities. Rent is due on the first day of each month in advance. The tenant paid a security deposit of \$550.00 on August 12, 2010 and a pet deposit in instalments of \$300.00. A move in and a move out condition inspection was completed with the tenant. An additional occupant moved into the rental unit and was included in an addendum to the tenancy agreement on September 29, 2010. The agreement states that an additional rent of \$100.00 will be charged for any additional occupants and this sum was applied to the rent taking the rent to \$1,200.00 per month.

The landlord testifies that the tenants owed a balance of rent of \$1,640.68 for:

November, 2010 of \$101.42

December, 2010 of \$101.42

January, 2011 of \$101.42

February, 2011 of \$136.42

March, 2011 of \$1,200.00

The landlord testifies that the female tenant gave Notice to end the tenancy in writing on February 15, 2011 giving an effective date for the tenancy to end as of March 15, 2011. On March 02, 2011 the tenants were served with a 10 Day Notice to End Tenancy on by posting this to the tenant's door. This Notice has an effective date of March 12, 2011 and states the tenants owe rent of \$1,600.00 due on March 01, 2011. The landlord states this is an error and it should have read unpaid rent of \$1640.68. The landlord states the tenants did not pay the outstanding rent and they moved from the rental unit and returned the keys on March 17, 2011. The landlord states the tenant attended the move out condition inspection but left before the inspection was completed and refused to sign the inspection report

The landlord testifies that the tenants caused damage to the rental unit and did not clean the rental unit at the end of the tenancy. The landlords have provided copies of the move in

and move out condition inspection reports which details most of the damage and cleaning claimed. The landlords seek to recover the following costs from the tenants:

- The tenants did not clean the carpets which were left dirty and stained and covered in cat hair. The landlords incurred costs of \$120.00 to have the carpets steam cleaned. (Receipt provided)
- The tenants did not clean the house and the landlord's incurred costs of \$120.00 (receipt and details of work completed provided)
- Bedroom blinds and custom fitted sliding window blinds were damaged and had to be replaced. Landlord only seeking costs for the bedroom blinds of \$40.71 (receipt provided)
- Burnt out or missing light bulbs (approximately eight) replaced from the landlords stock \$4.00
- Replacement shower curtain as tenant had given the shower curtain away \$7.82 (receipt provided)
- Labour for the removal of a torn border in the bathroom and to cut and install two blinds for the bedrooms \$250.00.

The landlord states there was conflict between these tenants and the downstairs tenant which resulted in the downstairs tenant moving from her unit and ending her fixed term tenancy. The landlord has provided a letter the downstairs tenant sent to the female tenant about her concerns. The landlord states she advertised the downstairs unit for rent and could not re-rent it until the middle of May, 2011. The downstairs tenants rent was \$850.00 per month and the landlord seeks to recover the sum of \$2,125.00 from the upstairs tenants as she holds them responsible for the downstairs tenant moving from her unit. The landlord also seeks to recover the cost of advertising the downstairs unit paid in three payments of \$129.30, \$44.09 and 465.46.

Analysis

The tenants did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the

tenants, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

With regard to the landlords claim to recover unpaid rent; Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I am satisfied from the evidence presented in the form of the tenancy agreement and the 10 day Notice that was issued to the tenants that a balance of rent is outstanding for November, December, 2010 and January, February, 2011. I also find the tenants did not give the landlords the required one clear months notice to end their tenancy in accordance with s.45(1) of the *Act* and they moved out after the effective date of the 10 Day Notice. Therefore the landlord is also entitled to recover unpaid rent for March, 2011. I also accept that the landlord made a mathematical error on the amount of rent owed when she filled in the 10 Day Notice. The landlord states she inadvertently forgot to add all the outstanding rent and only claimed \$1,600.00 was outstanding when in fact from the figures presented by the landlord for unpaid rent the total amounts to \$1,640.68. Consequently the landlords have established their claim for \$1,640.68 and will receive a Monetary Order pursuant to s. 67 of the *Act*.

With respect to the landlord's claim for damages, the onus is on the landlord to prove a 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the tenant's failure to comply with the *Act* or the tenancy agreement;
3. The actual amount required to compensate the landlord for the damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

I have sufficient evidence before me for the majority of the landlords claim for damages and cleaning. The landlords have provided evidence to show that the tenants did not clean the

unit to a reasonable standard at the end of the tenancy, the tenants did not clean the carpets which had stains and cat hair on them, light bulbs were blown or missing, a wall paper border was torn and a shower curtain was missing. However, I have no evidence before me to show that the tenant have caused damage to the blinds and the landlords claim will be adjusted accordingly as they have failed to meet all the requirements of section 1 and 2 of the above test for the blinds. Consequently it is my decision that the landlords are entitled to recover \$120.00 for carpet cleaning, \$120.00 for house cleaning, \$4.00 for light bulbs, \$7.82 for a replacement shower curtain and a portion of her claim of \$250.00 for labour costs in removing the border and filling and painting the wall to a sum of \$175.00. The total amount awarded to the landlords for these damages and cleaning is \$426.82.

The landlords also seek to recover unpaid rent for the unit situated below the tenants unit. The landlord argues that as a result of conflict between the tenants residing in these two units and the other tenants' alleged fear of continuing to reside in her unit; she elected instead to end her fixed term tenancy. However, the landlords evidence does not support their claim for a loss of rent for March, April and part of May, 2011 and have not shown that it is the tenants responsibility to pay a loss of rental income for the other tenant nor does it support the landlords claims to recover advertising costs from the tenants to re-rent this other tenants unit. The landlord's recourse in this matter would be to recover these costs against the other tenant. Consequently this section of her claim is dismissed without leave to reapply.

I find the landlords are entitled to keep the tenants security deposit and pet deposit in partial satisfaction of their claim pursuant to s. 38(4)(b) of the *Act*. The sum of \$850.00 has been offset against the amounts owed to the landlords by the tenants. I further find as the landlords have been partially successful with their claim that they are entitled to recover their \$50.00 filing fee from the tenants. A Monetary Order has been issued for the following amount:

Unpaid rent	\$1,640.68
Cleaning and damages	\$426.82

Subtotal	\$2,067.50
Less security and pet deposits	(-\$850.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$1,267.50

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,267.50**. The order must be served on the respondent 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: July 14, 2011.

Residential Tenancy Branch