



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, to keep all or part of the 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 each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on May 14, 2011. Mail receipt numbers were provided in the Landlord's evidence. The Landlord advised he also sent copies to each Tenant via e-mail and spoke to both of them over the phone. Each Tenant is deemed to be served the hearing documents on May 19, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present his 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 fixed term tenancy agreement that began September 1, 2010 and switched to a month to month tenancy after eight months (April 30, 2011). Rent was payable on the first of each month in the amount of \$1,550.00 and on September 1, 2010 the Tenants paid \$775.00 as the security deposit. Both Tenants attended the

move in inspection in late August 2010 however only one Tenant attended the move out inspection on May 2, 2011.

The Landlord testified the Tenants sent him a text message on April 6, 2011 to advise they were moving out as of May 1, 2011. The move out inspection was conducted May 2, 2011 at which time the Tenants informed the Landlord they needed to return the next day for one more truck load. The Landlord was at the unit May 3, 2011 when they completed their final removal of property and returned the keys. The photos provided in the Landlord's evidence were taken May 3, 2011.

The Landlord is seeking reimbursement for losses he incurred to have the carpet on the stairs cleaned, remove the debris left behind, and repairs to the holes in the walls and a cabinet that was broken in the kitchen at a cost of \$795.00. These were all noted on the move out inspection report provided in evidence.

The Landlord is also seeking \$1,550.00 for lost rent for the month of May 2011 because the Tenants did not provide proper notice to end their tenancy and he was not able to re-rent the unit until June 1, 2011.

Analysis

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 45 of the Act provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that (a) is not earlier than one

month after the date the landlord receives the notice, and (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Therefore if the Tenants wanted to end their tenancy as of April 30, 2011 they would have had to provide notice to end their tenancy, in writing, to the Landlord no later than March 31, 2011. In this case the notice was provided via text on April 6, 2011 and the Tenants retained possession of the unit until May 3, 2011.

Based on the aforementioned I find the Landlord has met the burden of proof for loss of May 2011 rent and I approve his claim of **\$1,550.00** lost rent.

Section 32 (2) & (3) of the Act provides: (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access; (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

The evidence supports the Tenants left the unit with damage to a kitchen cabinet, 4 holes in walls, debris that needed to be removed, and without cleaning the carpets on the stairs. I accept the Landlords testimony that he suffered a loss to remedy the damage however the Landlord has not provided sufficient evidence to support the actual costs incurred. Although there was a typed written statement of costs, I find the invoice provided to be questionable with amounts that appear to be inflated. There were no supporting receipts provided such as proof of rental of the steam cleaner or receipts from the landfill and there was no evidence to prove payment was made by the Landlord to have this work completed.

Residential Tenancy Policy Guideline #16 states that a Dispute Resolution Officer may award "nominal damages" which are an award as an affirmation that there has been an infraction of a legal right and where the actual amount of the loss may not have been proven.

In this case, pursuant to section 67 of the *Residential Tenancy Act* I find the Landlord is entitled to **\$455.00** for damages as follows:

- \$260.00 for labour to repair and clean the rental unit including removal of debris
- \$75.00 for materials to repair and touch up paint to walls and repair cabinet
- \$55.00 for landfill fees
- \$65.00 for shampoo and carpet cleaning rental

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

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

Loss of Rent for May 2011	\$1,550.00
Damages	455.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$2,055.00
LESS: Security Deposit of \$775.00 plus interest of \$0.00	<u><u>-775.00</u></u>
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,280.00

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,280.00**. This Order is legally binding and must be served on the respondent Tenants.

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: August 24, 2011.

Residential Tenancy Branch