



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the landlords to obtain a Monetary Order for unpaid rent, for damage to the unit, site or property and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement. The landlords also seek to keep the security deposit and pet damage deposit and to recover the filing fee for this application.

The tenants confirmed receipt of the hearing documents and landlords evidence.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

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?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords entitled to keep the tenants security deposit?

Background and Evidence

Both parties agree that this tenancy started on September 01, 2011 when four tenants rented this unit together. Two of these tenants moved from the rental unit and a new verbal tenancy agreement was entered into with these two remaining tenants on May 31, 2010. At that time rent for this unit was reduced to \$1,150.00 per month. Rent was due on the first day of the month. The tenants paid a security deposit of \$750.00 on September 01, 2009 and a pet deposit of \$250.00 on October 01, 2009.

The landlord's testify that they served the tenants with a One Month Notice to End Tenancy on May 28, 2011. The tenants paid \$700.00 on June 01, 2011 so the landlords served them with a 10 Day Notice to End Tenancy on June 02, 2011. This Notice has an effective date of June 11, 2011 due to \$1,150.00 in unpaid rent for June, 2011. The landlords seek to recover unpaid rent for June of \$450.00.

The landlord's testify at the start of the tenancy all four tenants attended the move in inspection but did not sign the inspection report. When these two tenants moved out on June 11, 2011 they were given opportunities to attend a move out inspection; one opportunity verbally, one written and sent by courier and another through e-mail conversations. The landlords have provided a record of the e-mails between them and the tenants, including one sent to them by the tenants who state they do not want to participate in the walk through and to keep the security deposit. The landlords testify the inspection was then completed in the tenant's absence. The landlords agree they have two different copies of the move in inspection report one provided by the landlords one provided by the tenants. The landlord states there are discrepancies on these reports as one was filed for their records and one was given to the tenants. They state their claim is based on the one the tenants have.

The landlords testify the tenants had caused damage to the walls, light fixtures, scratches on doors, damage to door frames, a burn mark on a window sill, stains on the carpets, damage to the trim, broken towel rail, damage to two blinds, damage to the carpet, a

missing light fixture. The tenants had also left the unit in an extremely dirty condition including appliances. They had left rotten food in the fridge, excessive garbage, filthy floors, dirty fridge left full of food, cat feces on the wall, toilet was left unclean, the bathroom was filthy, and the shower was dirty. The tenants had also left an old box spring and a mattress which the landlords had to dispose of along with the other garbage including two shopping carts. The landlord's testify they had to hire a restoration company to do the bulk of this work but they did do some painting to mitigate the losses.

The landlords have provided copies of the inspection reports and photographic evidence showing the condition of the unit at the end of the tenancy. The landlords seek to recover the costs associated with making repairs to the unit and to clean the unit. The landlords have provided receipts for the restoration company of \$2,300.91; \$1,015.00 to repaint the unit; \$520.07 for painting materials and stove element; \$71.61 to replace two broken bedroom blinds; \$13.43 for an air freshener to mask the odour left in the unit; \$205.81 for repair materials; \$57.59 for light bulbs.

The landlords testify that due to the level of work required to the rental unit it could not be re-rented for July, 2011 and the landlords therefore seek to recover a loss of income for this month from the tenants to the sum of \$1,150.00. They state the unit was re-rented for September 01, 2011 but they do not wish to make a claim for loss of income for August, 2011.

The landlords also seek to recover the sum of \$57.00 to have their photographs printed that they have provided in evidence and \$17.02 for courier fees to send the application for dispute resolution to the tenants. The total amount of the landlords claim is now **\$5,900.85**. This includes their \$100.00 filing fee.

The tenants do not dispute that they rent for June, 2011 of \$450.00. The tenant's do dispute that they are responsible for a loss of income for July, 2011 as the landlords had evicted them in June.

The tenant's testify that when they moved in to the unit they asked the landlords their preferred way for the tenants to put up pictures and posters. They state the landlord told them to use thumbtacks. The tenants do not dispute the condition of the rental unit as depicted in the landlord's photographs but states they only had 10 days to vacate the unit and did not have time to clean. The tenants also agree they did send the landlord an e-mail stating they could keep their security deposit and thought this would cover the cleaning costs.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for unpaid rent for June, 2011; the tenants do not dispute that they owe the sum of **\$450.00** to the landlords therefore; I find the landlords are entitled to a monetary award to recover this sum from the tenants.

With regards to the landlords claim for damage to the rental unit; 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 amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

Having considered the discrepancies between the landlords move in condition inspection and that provided by the tenants I have based my decision on the information contained within the move in condition inspection provided by the tenants and the photographic evidence and move out inspection report provided by the landlords. Based on this evidence it is my decision that the tenants did not leave the rental unit in a reasonable clean or sanitary condition at the end of the tenancy and did not repair damage caused to the rental unit during the tenancy as is their responsibility under s. 32 of the *Act*. Consequently, I find

the landlords have established their claim for damages and cleaning to the sum of **\$4,126.83**.

I have considered the landlords claim for the cost of printing photographs to be used in evidence. As they landlords would not have incurred this cost a if the tenants had cleaned and repaired the unit at the end of the tenancy I find the landlords are entitled to recover this sum of **\$57.00** from the tenants.

With regard to the landlords claim to recover courier costs for the delivery of the hearing documents for this proceeding; This cost is deemed to be a cost of doing business as a landlord therefore this section of the landlords claim is denied.

With regard to the landlords claim for a loss of rental income for July, 2011; I find the tenants moved from the rental unit in accordance with a 10 Day Notice that was issued to them. However, due to the condition the unit was left in, it rendering it un-rentable for July. I have considered the testimony and documentary evidence in this matter and refer the Parties to the Residential Tenancy Policy Guidelines # 3 which state In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. Therefore due to the damage and cleaning required and due to the fact the tenants moved based on the 10 Day Notice to End Tenancy I find the landlords have established their claim for a loss of rental income of **\$1,150.0**.

With regard to the landlords claim to keep the security and pet deposits; if a tenant agrees in writing that a landlord may keep all or part of a security or pet deposit then a landlord does not normally have to file an application to keep the deposits. As the tenants had only agreed in writing that the landlords could keep the security deposit I am prepared to make a decision on this matter. Therefore due to the costs incurred by the landlords and the unpaid rent I find the landlords are entitled to keep both the security and pet deposits to a total sum of **\$1,000.00** pursuant to s. 38 (4)(b) of the *Act* and this money will be offset against the landlords monetary award.

As the landlords have been successful with their amended claim they are entitled to recover the **\$100.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order pursuant to s. 67 and 72(1) of the *Act* has been issued to the landlords for the following amount:

Unpaid rent for June, 2011	\$450.00
Loss of rent for July, 2011	\$1,150.00
Damages and cleaning	\$4,126.83
Cost for photo processing	\$57.00
Subtotal	\$5,783.83
Plus filling fee	\$100.00
Less security and pet deposits	(-\$1,000.00)
Total amount due to the landlords	\$4,883.83

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,883.83**. The order must be served on the respondents 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: October 03, 2011.

Residential Tenancy Branch