



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 the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord, both tenants and their witness.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties acknowledge the tenancy began in July 2010 as a month to month tenancy for the monthly rent of \$850.00 due on the 1st of each month and that a security deposit of \$425.00 was paid.

In a previous decision the landlord obtained an order directing that she could retain \$50.00 from the security deposit held. As such the balance of the security deposit is \$375.00.

The landlord submitted a copy of a note from the tenants dated July 5, 2011 that states: "Consider this our notice to end tenancy. You will have 15 days to return our damage deposit to [address provided] as ordered by Arbitrator once received we will return your keys." The tenants acknowledge providing this note to the landlord but testified that they then gave the keys to the landlord's roommate the following day.

The tenants did not identify the roommate who they gave their keys to, despite the landlord's request for them to name the roommate. The landlord testified that none of her roommates ever identified that they received the keys from the tenants.

The landlord submitted the tenants failed to pay rent on July 1, 2011; that they moved out; turned on all electric baseboard heaters and left all the lights on and failed to return

any keys. The tenants deny leaving the heaters on high and testified that they obtain crisis supplements from the Ministry of Social Development (MSD) to pay the landlord \$113.00 each for the 5 days in July that they remained in the rental unit, in accordance with a verbal agreement the tenants made with the landlord. The landlord denies making such an agreement or receiving any funds for the month of July.

Both parties acknowledge the tenants reported the landlord to the local authorities and as a result her rental unit was deemed to be illegal and she had to dismantle the rental unit. The landlord has provided confirmation that that she has complied with that order. The tenants assert that because the rental unit was illegal that they should not have to pay rent.

A move in or move out Condition Inspection Report was not completed by the landlord. The landlord asserts the tenants removed some glass under a neon light bar; a light fixture from a wardrobe; two mattresses; and a 4 foot tall metal shelf. The landlord also claims the tenants left the oven, floors and cupboards dirty and the windows smutty; that the tenants “smashed flattened currant bush” and that the landlord had to remove garbage from the rental unit.

The landlord seeks the following compensation:

Description	Amount
Rent – July 2011	\$850.00
Neon light glass	\$70.00
Wardrobe light fixture	\$25.00
Two mattresses	\$200.00
Metal shelf	\$40.00
Change Locks	\$132.72
Garbage Removal	\$35.00
Currant Bush	\$35.00
Total	\$1,387.72

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I accept, based on both parties testimony that the tenants failed to pay rent in the amount of \$850.00 to the landlord on July 1, 2011 when rent was due. I accept that at least one of the tenant's received monies from the MSD as a crisis supplement for shelter.

However, the document provided by the tenants confirms that the crisis supplement was for the period of June 1 – June 30 2011 and not for July 2011. Further, the documentation does not provide specific details as to why the funds were issued. As such, I am not able to determine why the tenants received this money.

Further, as the landlord disputes the tenants' contention that they had an agreement with the landlord, I find the tenants have failed to establish they had any such agreement with the landlord. And despite the tenants' assertion that the landlord normally did not provide receipts, I find it unlikely that the tenants would not have been able to provide evidence of any such payments to the landlord.

As to the tenants' claim that they should not have to pay rent because the landlord had provided them with an illegal rental unit and she is therefore not entitled to collect rent, I find the *Act* does not allow for tenants to simply stop paying rent if they discover that the rental unit was an illegal rental unit.

I find that a landlord's failure to provide a rental unit that complies with the health, safety and housing standards required by law would be deemed as a material term of any tenancy agreement. As such, the *Act* allows, under section 45, to end a tenancy if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure.

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 the *Act*, regulations or tenancy agreement. Rent was due on July 1, 2011 and by the tenants' testimony they were informed the day they were moving out, after July 1, 2011 that the rental unit was illegal, and as such, I find they cannot now rely on information they found out after rent was due to withhold rent.

For the above noted reasons, I find the landlord is entitled to the payment of a full months' rent for July 2011.

In relation to the landlord's claim for damage to the rental unit, I find the landlord, in failing to provide any evidence of the condition of the rental unit at the start of the tenancy and by failing to provide any evidence to establish the value of any such losses, has failed to establish she suffered any loss resulting from a violation of the *Act*, regulation, or tenancy agreement or establish the value of any loss. I dismiss this portion of the landlord's Application.

However, I do not accept that the tenants returned the keys to the landlord's roommate and even if they did the contractual relationship was between the landlord and the tenants. The *Act* requires the keys be returned to the landlord and in the absence of any documentation that the landlord's roommate was acting on the landlord's behalf, I find the tenants are responsible for the costs to re-lock the rental unit, as supported by the receipt submitted by the landlord.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,032.72** comprised of \$850.00 rent owed; \$132.72 for re-locking the unit and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the balance of the security deposit held in the amount of \$375.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$657.72**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced 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 12, 2011.

Residential Tenancy Branch