



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Preliminary Issues

The parties advised me there was an error in the spelling of last name of one of the tenants. The parties did not raise any objections to the error being corrected and this has now been amended.

Introduction

This hearing was convened by way of conference call in repose to the landlords application for an a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This tenancy started on April 01, 2011. This was a fixed term tenancy which was due to expire on March 31, 2012. Rent for this unit was \$950.00 per month due on the 1st of each month. The tenants paid a security deposit of \$475.00 on March 18, 2011. The tenants left the rental unit on August 31, 2011.

The landlord's agent testifies that the tenants abandoned the rental unit without notice to end the tenancy. The landlord's agent testifies that the rental unit had been left in a disgusting condition. The landlord's agent testifies that she called the male tenants father concerning this matter and the tenant's father did come to the unit and did some cleaning there for the tenants. The remainder of the unit was cleaned by the landlord's agent. This took three hours and for this work the landlord's agent seeks a monetary sum of \$100.00.

The landlord's agent testifies that the carpets in the unit had been left dirty and stained. The landlord seeks to recover the sum of \$90.00 for carpet cleaning and has provided a receipt for this work in evidence.

The landlord's agent testifies that the tenants did not return all the keys to the unit. The landlord's agent testifies that for the security of incoming tenants the locks to the units had to be changed and the landlord seeks to recover the sum of \$93.00 for this work. A receipt has been provided in evidence. The landlord's agent also testifies that the tenants had been issued with two parking decals and two visitor passes. Only one each

of these was returned at the end of the tenancy and the landlord seeks to recover the sum of \$25.00 each to replace these items.

The landlord's agent testifies that there was also some damage to the walls and painting and repairs are required to bring the unit back to the same condition it was in at the start of the tenancy. The landlord's agent testifies this work has not yet been completed as the landlord has no available funds but the landlord has estimated the cost of this work to be \$400.00 and seeks to recover this from the tenants.

The landlord's agent testifies that the tenants caused some damage to the drawer under the stove. The drawer had to be replaced as there were pieces missing from the tracks. The landlord has provided a receipt for this replacement and seeks to recover the sum of \$87.66 from the tenants.

The landlord's agent testifies that the tenants broke the terms of the lease agreement and as this was a fixed term tenancy until March 31, 2011 the landlord seeks to recover a loss of rental income for September, October, November and December, 2011. The landlord's agent testifies that the unit was advertised on five different internet sites and it was been re-rented for January 01, 2011 for the same amount of rent. The landlords claim for unpaid rent or loss of rental income is for \$6,650.00.

The landlord seeks an Order to keep the tenants security deposit of \$475.00 and seeks an Order to recover the \$100.00 filing fee from the tenants for the cost of this application.

The tenants agree they did abandon the rental unit on August 31, 2011. The tenants state that they do not dispute any of the landlord's agent's testimony. The female tenant states that she was unaware any of this was occurring and she had been told by the male tenant that the landlord had agreed to take \$2,000.00 to end the lease.

The landlord's agent disputes this and states no agreement had been entered into and the first she knew that the tenants had moved out was when she discovered that the unit had been abandoned.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. Therefore I find both tenants are equally responsible for any debts relating to this tenancy.

With regards to the landlords claim for unpaid rent or loss of rental income; A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

In this case the tenants did not give the landlord notice to end the tenancy and abandoned the rental unit before the end of the fixed term. Where a tenant has abandoned the premises and the tenancy has ended with the abandonment, notice must only be given within a reasonable time after the landlord becomes aware of the abandonment and is in a position to serve the tenant with the notice or claim for

damages. The damages awarded are an amount sufficient to put the landlord in the same position as if the tenants had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenants could legally have ended the tenancy. This may include compensating the landlord for the difference between what the landlord would have received from the defaulting tenants and what the landlord was able to re-rent the premises for the balance of the un-expired term of the tenancy. In this case the landlord did attempt to re-rent the unit and was unsuccessful in finding new tenants until January, 01, 2012. Therefore the landlord is only entitled to recover the loss of rent for four months to the sum of **\$3,800.00** and a Monetary Order has been issued pursuant to s. 67 of the Act.

With regards to the landlords claim for cleaning and damages to the unit; the landlord has provided sufficient evidence, which the tenants have not disputed, to show that the tenants did not clean the unit, to show that they left the carpets in an unclean condition and failed to repair damage to the drawer in the stove. I also find the tenants did not return all the keys to the unit which resulted in the locks having to be changed and they did not return all the parking decals and visitor passes which resulted in these having to be replaced. Consequently, I uphold the landlords claim for cleaning of **\$100.00**; for repair to the drawer under the stove of **\$87.66**; for carpet cleaning of **\$90.00**; for changing the locks of **\$93.00**; and for the replacement of the parking decal and visitors pass of **\$50.00**. The landlord will receive a monetary order to the sum of **\$420.66**.

As the landlord has provided no evidence to show either an estimated cost or actual cost for repairs and painting, as this work has not yet been done, I dismiss this section of the landlords claim with leave to reapply.

I Order the landlord to keep the tenants security deposit of \$475.00 in partial satisfaction of the claim pursuant to s. 38(4)(b) of the *Act*.

As the landlord has been partially successful with this claim I find the landlord is entitled to recover the **\$100.00** filing fee from the tenant pursuant to section 72(1) of the *Act*.

The landlord will receive a monetary order for the following amount:

Loss of rental income for four months	\$3,800.00
Cleaning and repairs	\$420.66
Subtotal	\$4,220.66
Plus filing fee	\$100.00
Less security deposit	(-\$475.00)
Total amount due to the landlord	\$3,845.66

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$3,845.66**. The order must be served on the tenants 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: December 15, 2011.

Residential Tenancy Branch