



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security and pet damage deposits in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence, to make submissions and to cross-examine one another. The male tenant (the tenant) confirmed that the landlord handed the female tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on January 2, 2012. The landlord testified that she attempted to hand the female tenant a copy of the dispute resolution hearing package on January 10, 2012 and subsequently handed it to the male tenant. The tenant confirmed that both tenants had received the landlord's dispute resolution hearing package. I am satisfied that the landlord served these documents to the tenants in accordance with the *Act*.

The tenant confirmed that he had received the landlord's written evidence package, a 21-page written evidence package also received by the Residential Tenancy Branch (RTB) in advance of this hearing. The landlord said that she had not served the tenant with a smaller written evidence package, a 7-page written evidence package received by the RTB as late evidence on January 24, 2012. As the landlord had not served this second set of evidence to the tenants, I have not considered this evidence in this hearing.

The landlord confirmed that the tenants vacated the rental unit and gave up possession of the rental unit on January 17, 2012. Since the landlord has obtained possession of the rental unit after submitting her application for dispute resolution, the landlord

withdrew her application for an Order of Possession. I agreed to the landlord's withdrawal of this portion of her application for dispute resolution.

At the commencement of the hearing, the landlord asked that the amount of her application for a monetary award be raised from \$2,028.81 to "\$2,981.94 and up" to reflect damage that has become evident once the landlord was able to gain occupancy of the rental unit after the tenants vacated the rental unit on January 17, 2012. She said that she is continuing to receive bills and estimates and asked that her next utility bill that she received on the morning of the hearing also be considered as part of her application for a monetary award for damage and recovery of unpaid utilities. Since the landlord had made no formal amendment to her application for dispute resolution so as to alert the tenants to the additional monetary awards she was seeking, I declined to consider these escalating claims for damage as part of the current application for a monetary award. I did so as I am not satisfied that the tenants have been afforded a proper opportunity to address the additional items listed in the landlord's January 29, 2012 monetary order worksheet but for which the landlord submitted no amendment to her application for dispute resolution.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security and pet damage deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This periodic tenancy commenced on February 1, 2010. Monthly rent was set at \$1,200.00, payable in advance on the first of each month, plus 2/3 of the utilities for this rental property. The landlord continues to hold the tenants' \$600.00 security deposit and \$600.00 pet damage deposit paid on January 9, 2010.

The parties agreed that no joint move-in condition inspection was conducted at the beginning of this tenancy, nor did the landlord conduct her own condition inspection or issue a condition move-in condition inspection report. Although a joint move-out condition inspection was conducted on January 21, 2012, the landlord said that she has not yet sent the tenants a copy of that report.

The landlord's application for a monetary award of \$2,028.21 listed the following items in the Monetary Order Worksheet she attached to her application for dispute resolution:

Item	Amount
Unpaid January 2012 Rent	\$1,200.00
Unpaid Gas Bill	76.89
Broken Window	125.00
Damaged Carpet	619.92
NSF Cheque Fee	7.00
Total Monetary Award Requested	\$2,028.81

The landlord also applied for recovery of the \$50.00 filing fee for her application from the tenant.

At the hearing, the parties agreed that the tenants paid \$1,200.00 in outstanding rent for January 2012 and the landlord's \$7.00 N.S.F. cheque fee on January 21, 2012. As such, the landlord advised that she was no longer seeking either of these amounts identified in her application for dispute resolution.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following resolution of the landlord's current application for a monetary award under the following terms:

1. Both parties agreed that the tenants have paid all of their January 2012 rent and the landlord's \$7.00 NSF Cheque Fee.
2. Both parties agreed that the landlord is entitled to a monetary award of \$871.81 to reimburse the landlord for the unpaid \$76.89 gas bill, the landlord's claims for the \$125.00 broken window and the \$619.92 damaged carpet, and to allow the landlord to recover her \$50.00 filing fee for her application.
3. Both parties agreed that the landlord can retain \$871.81 from the tenants' security and pet damage deposits to satisfy the monetary award provided in their agreement.
4. Both parties agreed that the landlord will return the remaining \$328.19 value of the tenants' security and pet damage deposits to the tenants.

Conclusion

As per the parties' agreement, I allow the landlord to retain \$871.81 from the tenants' security and pet damage deposits. In order to implement the above settlement reached between the parties, I issue a monetary Order in the tenants' favour in the amount of \$328.19. I deliver this Order to the tenants in support of the above agreement for use in the event that the landlord does not abide by the terms of the above settlement. The tenants are provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 27, 2012

Residential Tenancy Branch