



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, 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 and both tenants.

The landlord testified she served the tenants with her evidence by Express Post on February 14, 2012. I confirmed during the hearing that the Express Post used by the landlord did not require a signature of the recipient as such, I find that the tenant's were not served with the landlord's evidence in accordance with the *Residential Tenancy Act (Act)*.

Further the tenants testified that they did not receive the landlord's evidence. Upon review of the landlord's evidence with the exception of the landlord's receipts for items and some photographs I find the tenants are not prejudiced if I consider these photographs and I accept the landlord's evidence to be considered in this decision.

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 compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 23, 24, 35, 36, 37, 67, and 72 of the *Act*.

Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the parties on April 28, 2010 for a 7 month and 1 day fixed term tenancy agreement beginning on May 20, 2010 that converted to a month to month tenancy on December 21, 2010 for a monthly rent of \$2,200.00 due on the 20th of each month with a security deposit of \$1,100.00 paid on April 29, 2010.

The tenancy ended on November 25, 2011 after the parties signed a Mutual Agreement to End Tenancy. The tenants submit they had agreed to have the landlord retain the security deposit to cover unpaid rent in the amount of \$1,100.00. The landlord testified

that she had agreed to this if there was no damage to the rental unit only and as she is not claiming damage to the rental unit the landlord submits she had no such agreement with the tenants.

The parties agree the tenants failed to pay the full rent for the month of November 2011; that the parties completed a move out inspection on November 25, 2011 (even though the male tenant did not sign the Condition Inspection Report); and that the landlord did not complete a move in inspection.

The landlord submits the tenants caused damage to the walls in the rental unit through various dents in the walls; to the kitchen stone counters through the use of oils and water left on the counter for which the landlord claims costs of cleaning the counters; carpet and room cleaning; for replacement parts and installation of a food disposal system; carpet and room cleaning; and shelves removed by the tenants.

The landlord has submitted into evidence the following receipts:

- \$448.00 – kitchen counter, clean stove oven, hang fan, refridge, bath cleaning walls repairs and painting;
- \$89.60 waste disposal installation; and
- \$112.99 food waste disposal unit.

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, from the testimony of both parties, that the tenants owe the landlord ½ month's rent for the end of the tenancy.

Section 23 of the *Act* requires a landlord to complete a move in condition inspection and subsequent report at the start of the tenancy. Part of the reason for this requirement is to document the condition of the rental unit at the start of the tenancy.

While sometimes photographic evidence can serve this purpose, those photographs must be taken at the same time that the tenants and landlord complete an inspection together and provide sufficient documentation of the condition of the specific part of the unit that the landlord later claims compensation for damages for.

From the photographs submitted by the landlord in this case, I find there is no indication from the landlord as to when these photographs were taken. So it is unclear if they were taken on or just before the date the tenants took possession of the rental unit. I also find the details of the photographs are sufficiently vague as to not warrant any value in establishing the landlord's claim.

For example, in relation to the landlord's claim for damage to the kitchen countertops, the photograph the landlord submits was taken prior to the tenancy shows a shot of the kitchen from a point outside of the kitchen looking in where the counters appear at an angle and there is no clear shot showing the colour or condition of them. However, the photographs submitted by both the tenants and the landlord show close ups of the countertops and provide different aspects that cannot be compared to the photograph submitted at the start of the tenancy.

For these reasons, I find the landlord has failed to establish the condition of the rental unit at the start of the tenancy in relation to the condition of the walls; counter; and food waste disposal unit. Further, in regard to the waste disposal unit, I find the landlord's assertion that the disposal unit had been damaged for three months prior to notification from the tenants is unsubstantiated. For these reasons, I find the landlord has failed to establish she has suffered a loss or damage and I dismiss these portions of her Application.

In relation to the carpet and room cleaning, I find in the move out condition inspection report the landlord has only identified the carpet in the living room and the window coverings in the entry way as not cleaned. However, I find that in the receipt for any work completed for the landlord neither carpet cleaning or window covering cleaning are identified as items the landlord paid for or had completed and the landlord has failed to establish the value of this loss.

In addition, I find the landlord has also not provided any receipts to establish for replacement of the shelves that she indicated the tenants had removed without her consent and therefore she has failed to establish the value of this loss.

For these reasons, I dismiss these portions of the landlord's Application.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit, less any mutually agreed upon (in writing) amounts, or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the landlord's Application that was filed on December 14, 2011 I note that the landlord has not filed to retain the security deposit and I find, from the landlord's testimony, that the parties did not enter into an agreement for the landlord to retain any of the security deposit. As such, I find the landlord has failed to comply with Section

38(1) and the tenants are entitled to double the security deposit in accordance with Section 38(6).

Conclusion

For the reasons noted above, I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,075.00** comprised of \$2,200.00 double the security deposit owed less \$1,100.00 rent owed and \$25.00 of the \$50.00 filing fee paid by the landlord for this Application, as the landlord was only partially successful.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants 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: February 24, 2012.

Residential Tenancy Branch