



Dispute Resolution Services

Page: 1

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 pursuant to the *Residential Tenancy Act* (the *Act*) for:

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

The tenants did not attend this hearing, although I waited until 9:42 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that the tenants were handed a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on October 11, 2011. The landlord testified that she sent copies of the landlord's dispute resolution hearing package to both tenants by registered mail on December 17, 2011. She provided a copy of the Canada Post Tracking Numbers to confirm both mailings. I am satisfied that the landlord served the tenants with the above documents and the landlord's written evidence package in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security and key deposit 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 tenancy commenced as a one-year fixed term tenancy on September 1, 2008. Once the initial term expired, the tenancy converted to a periodic tenancy. By the time the tenants vacated the rental premises on December 2, 2011 the monthly rental was

set at \$880.00, The landlord continues to hold the tenants' \$402.50 security deposit and a \$50.00 key deposit paid on September 1, 2008.

The landlord's 1 Month Notice required the tenants to end their tenancy by November 30, 2011. The landlord entered into written evidence a copy of the September 1, 2008 joint move-in condition inspection report and a December 2, 2011 move-out condition inspection report. The landlord provided written evidence that she issued a written request to conduct a joint move-out condition inspection with the tenants on November 29, 2011 and November 30, 2011. She said that she also made arrangements with the tenants to conduct this inspection with them on December 1, 2011, but the tenants did not meet at any of the requested times to conduct this inspection. She said that the tenants abandoned the rental unit on December 2, 2011 without leaving their keys to the rental unit.

The landlord's application for a monetary award of \$2,123.55 included the following items:

Item	Amount
Unpaid December 2011 Rent	\$880.00
Cleaning	175.00
Painting and Repairs	200.00
Carpet Cleaning	300.00
Drape Cleaning	98.55
Bifold Doors	150.00
Keys – Locks Replaced	170.00
Dumping Furniture	150.00
Total Monetary Award Requested	\$2,123.55

The landlord also requested recovery of the \$50.00 filing fee for the application and for authorization to retain the tenants' deposits in partial satisfaction of the monetary award.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for December 2011, the tenants would have needed to provide their notice to end this tenancy before November 1, 2011. Section 52 of the *Act* requires that a tenant provide this notice in writing. The tenants did receive a 1 Month Notice from the

landlord requiring them to end their tenancy by November 30, 2011. As they did not end their tenancy by that date, remained on the premises until December 2, 2011, and did not yield vacant possession of the rental premises by providing their keys to the landlord and removing all of their belongings from the premises before December 1, 2011, I find that the tenants were in breach of their tenancy agreement. As such, the landlord is entitled to compensation for lost rent for December 2011 resulting from the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for December 2011. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for December 2011. The landlord testified that the landlord placed advertisements regarding the availability of this rental unit in three local rental websites, in the landlord's own website, signs were posted on the outside of the property, and an advertisement was placed in the local military magazine, a frequent source used by the landlord to attract tenants. She said that she did show prospective tenants the rental unit late in December 2011, but due to the difficulties in finding new tenants at that time of year, the landlord remains unable to find a new tenant for the rental premises. The rental unit remains vacant. Based on this undisputed evidence, I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the tenants' loss.

For the above reasons, I issue a monetary award in the landlord's favour in the amount of \$880.00 for unpaid rent owing from December 2011.

I am also satisfied that the landlord gave the tenants ample opportunity to participate in a joint move-out condition inspection. The landlord has complied with the requirements regarding move-in and move-out condition inspections and in issuing reports of these inspections. When a tenant abandons a rental unit, as was the case in this instance, the landlord is eligible to claim against the security deposit if damage or loss arises from the tenancy.

Based on the undisputed evidence, oral, written and photographic provided by the landlord, I am satisfied that the landlord has suffered losses and damage arising out of this tenancy. I issue a monetary award in the landlord's favour for all of the items claimed in the landlord's application for a monetary award. However, I reduce the amount of the following two items claimed for the reasons cited below.

Residential Tenancy Policy Guideline #37 establishes that the useful life of a paint job for interior walls in a tenancy is 4 years (48 months). In this case, the landlord testified that the rental premises were last painted in August 2008, shortly before this tenancy commenced. As the tenants remain responsible for rent until the end of December 2011, I find that the repainting of the rental premises became necessary 8 months prior to the end of the useful life of the August 2008 paint job. As such, I find that the landlord is only entitled to recover 8/48 of the amount claimed for repainting. Although the landlord did not break down the repainting and repair category in the application for dispute resolution, I accept that at least some of the \$200.00 claimed by the landlord for these items included repairs for which the tenants are responsible. I allow the landlord a monetary award of \$50.00 for repairs and 8/48 of the remaining \$150.00 claimed by the landlord for repainting of the rental unit or \$25.00. This results in a total monetary award of \$75.00 for repainting and repairs.

The *Act* requires a landlord to re-key locks at the end of a tenancy. In this instance, I accept that the landlord's costs of rekeying and changing locks were increased beyond the norm because the tenant did not return any of the various keys they held, including those that accessed this building. Consequently, I allow the landlord a monetary award of \$130.00 for replacement of locks and keys, an amount which I have reduced to take into account the basic rekeying costs a landlord might typically be expected to incur at the end of a tenancy.

As the landlord has been successful in this application, I allow the landlord to retain the tenants' \$402.50 security deposit and \$50.00 key deposit plus applicable interest.

As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee for this application from the tenants.

Conclusion

I issue a monetary award in the landlord's favour which allows the landlord to recover unpaid rent and damage arising out of this tenancy, to recover the landlord's filing fee and to retain the tenants' deposits:

Item	Amount
Unpaid December 2011 Rent	\$880.00
Cleaning	175.00
Painting and Repairs	75.00
Carpet Cleaning	300.00
Drape Cleaning	98.55
Bifold Doors	150.00

Keys – Locks Replaced	130.00
Dumping Furniture	150.00
Less Security and Key Deposits (\$402.50 + \$50.00 + Interest of \$2.26 = \$ 454.76)	-454.76
Filing Fee	50.00
Total Monetary Order	\$1,553.79

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) 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: March 02, 2012

Residential Tenancy Branch