



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, 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, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The parties agreed that the tenants provided their written notice to end this tenancy to the landlord on January 2, 2012. In that notice, entered into written evidence by the landlord, the tenants advised that they intended to vacate the rental unit by January 30, 2012. The tenants said that they could not give this notice or their January 2012 rent to the landlord on January 1, 2012 because the landlord attending the hearing (the landlord) had a sign on her door saying that she would be away until January 2, 2012. The tenants confirmed that they received copies of the landlord's dispute resolution hearing package by registered mail sent by the landlord on January 25, 2012. I am satisfied that the parties served one another with the above documents and that the landlord served the landlord's written evidence to the tenants in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? 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 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 June 1, 2010. When the initial term of the tenancy expired, the tenancy converted to a periodic tenancy. By the end of this tenancy, monthly rent was set at \$920.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$447.50 security deposit paid on May 3, 2010, the tenants' \$200.00 pet damage deposit paid on June 1, 2010, and the tenants' \$30.00 fob deposit.

The landlord entered into written evidence a copy of the joint move-in condition inspection report of June 1, 2010 and the joint move-out condition inspection report prepared by the landlord when the tenants transferred possession of the rental unit to the landlord on January 17, 2012.

The landlord's revised application for a monetary award of \$2,507.60 included the following items:

Item	Amount
Unpaid January 2012 Rent	\$920.00
January 2012 Late Fee	20.00
Loss of Rent for February 2012	920.00
Carpet Cleaning	78.40
Painting/Wall Repair	459.20
General Suite Cleaning	30.00
Parking Fob	30.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award Requested	\$2,507.60

At the hearing, the landlord did not dispute the tenants' claim that the landlord's office had agreed to forego the \$20.00 charge for the late fee for January 2012. The landlord also testified that the parking fob was actually returned by the tenants so this charge should also be deducted from the landlord's claim for a monetary award.

During the hearing, the landlord testified that she did not advise the tenants that they would be responsible for the landlord's repainting of the premises when she conducted her joint move-out inspection with the tenants on January 17, 2012. She said that painting was added to this report when her property manager inspected the rental unit after the tenants vacated the rental unit. She explained that the property manager wanted the premises repainted because the tenants are smokers and she wanted a fresh paint job in the rental unit for new tenants. The landlord said that she believed that the premises were freshly painted during the month before this tenancy began.

The tenants testified that the rental unit had not been painted before they moved into the rental unit.

The tenants testified that water damage occurred in the summer of 2011 which damaged the carpets in the rental unit. The female tenant said that the carpets were not cleaned when the tenants first occupied the rental unit and that she had to rent a carpet cleaner and clean them herself when their tenancy commenced.

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 February 2012, the tenants would have needed to provide their written notice to end this tenancy before January 1, 2012. Whether or not the landlord was available on January 1, 2012 has no bearing on the tenants' failure to serve their written notice to end this tenancy prior to January 1, 2012. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

The tenants did not dispute the landlord's claim that the tenants failed to pay any rent for January or February 2012. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the undisputed evidence presented by the landlord, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises shortly after the landlord realized the tenants were vacating the rental premises. The landlord testified that the tenants ended their tenancy well before the January 30, 2012 effective date of their notice to end this tenancy. The landlord advertised the availability of the rental unit on rental websites the week after the tenants vacated the premises. The landlord said that new tenants who are taking occupancy of the premises on March 1, 2012, signed a residential tenancy agreement for these premises on February 17, 2012. I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the tenants' loss. I find that the landlord is entitled to a monetary award of \$920.00 for each of January and February 2012.

Although I have given consideration to the tenants' claim that the carpets were not clean when they commenced their tenancy, the joint move-in condition inspection that the

female tenant agreed to when the tenancy commenced shows that the carpets throughout the rental unit had been professionally cleaned by the start of this tenancy. The joint move-out condition inspection report noted that the carpets needed cleaning and/or shampooing. For these reasons and as the tenants did not dispute the landlord's claim that they did not clean the carpets at the end of their tenancy, I allow the landlord's requested \$78.40 for carpet cleaning as set out in the landlord's amended application for dispute resolution.

The landlord did not dispute the male tenant's claim that the landlord did not identify a need to repaint the rental unit when she conducted her joint move-out condition inspection with the tenants on January 17, 2012. I find that the property manager's subsequent inspection of the rental premises on her own and her "decision" that the premises required repainting at the tenant's expense is not sufficient to entitle the landlord to recovery of the landlord's costs to repaint this rental unit. Some repainting is generally required at the end of a tenancy. The landlord did not provide any photographs to support this application and admitted that the condition inspection report included items added by the property manager who did not participate in the joint move-out condition inspection report with the tenants on January 17, 2012. I am not satisfied that the landlord has demonstrated that the landlord is entitled to a monetary award for repainting and wall repair. Under these circumstances, I dismiss the landlord's claim for a monetary award for repainting and wall repair without leave to reapply.

Based on the evidence before me, I allow the landlord the requested monetary award of \$30.00 for general suite cleaning as I accept that some cleaning was required at the end of this tenancy.

I dismiss both the landlord's claim for a monetary award for the January 2012 late fee and for the loss of the fob key on the basis of the landlord's oral testimony that neither of these fees are owing.

I allow the landlord to retain the tenants' security, pet damage and fob deposits plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenants.

Conclusion

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

Item	Amount
Unpaid January 2012 Rent	\$920.00
Loss of Rent for February 2012	920.00
Carpet Cleaning	78.40
General Suite Cleaning	30.00
Less Security, Pet Damage and Fob Deposits (\$447.50 + \$200.00 + \$30.00 = \$677.50)	-677.50
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,320.90

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