



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlords for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of this application.

One of the landlords attended the conference call hearing, provided evidence in advance of the hearing, and gave affirmed testimony. The landlord also testified that each of the named tenants was personally served with the Landlord's Application for Dispute Resolution, evidence that the landlords intend to rely on, and notice of hearing documents on November 17, 2011. Neither of the tenants attended the hearing, and I find that both tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Are the landlords entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on September 1, 2011 and was to expire on August 31, 2012 and then revert to a month-to-month tenancy, although the tenants actually moved into the rental unit on August 17, 2011. Rent in the amount of \$895.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount

of \$450.00 which is still held in trust by the landlords. The landlords told the tenants that they could pay for the rent due from August 17, 2011 to August 31, 2011 by giving the landlords extra money on the 1st of each month when the rent was paid, but the tenants made no effort to pay any amount for those first few weeks of the tenancy. The tenancy agreement was ultimately signed on September 8, 2011 and a copy was provided in advance of this hearing.

The tenants failed to pay rent in full when it was due for the month of November, 2011 and the landlords applied for dispute resolution via the Direct Request Procedure. The landlords were successful in receiving an Order of Possession on 2 days notice to the tenants and a monetary order for \$620.00 for unpaid rent. The tenants ignored the notice to end tenancy and were subsequently served with the Order of Possession and stayed in the rental unit until the 2 days had expired.

Although no move-in or move-out condition inspection reports were completed, the landlord testified that the tenants abandoned 2 sofas, a dining room table and chairs, dishes, pots and pans, 2 side tables, a high-back chair, dirty laundry and other numerous items in the rental unit. The landlords found several methadone bottles and empty milk cartons, throughout the rental unit, as well as dog food still in the dog dish. The cupboards were full of recycling and garbage and the fridge and freezer were full of food, some of which was not edible. The landlords could not show the rental unit in the condition that it was left in, and the landlords had to take significant time to clean the entire unit as well as remove the items left behind by the tenants. The rental unit was re-rented for January 1, 2012, and the landlords claim loss of revenue from the tenants for the month of December, 2011, and request an order permitting the landlords to keep the security deposit in partial satisfaction of the claim.

Analysis

The *Residential Tenancy Act* states that if a landlord fails to cause a move-in and a move-out condition inspection report to be completed, the landlord's right to claim against the security deposit for damages is extinguished. The *Act* further states that a party making a claim against another party must do whatever is reasonable to mitigate, or reduce the damage or loss suffered. In this case, the landlords have not made an application for damages, but have applied for an order for loss of revenue that could not have been anticipated when the landlords applied for an Order of Possession and a monetary order through the Direct Request Procedure. In the absence of any evidence or testimony to the contrary, I accept the landlord's testimony, and I find that in the circumstances, the landlords are entitled to a monetary order for loss of revenue in the amount of \$895.00. I further find it prudent to order the landlords to keep the security

deposit in partial satisfaction of the claim. Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee for the cost of this application. The monetary order will be for the difference, calculated as follows:

Dec/11 Rent \$895.00	BALANCE \$895.00
	Less: Security Deposit \$450.00
DIFFERENCE	\$495.00

This monetary order is in addition to the monetary order obtained by the landlords at the Direct Request Proceeding.

Conclusion

For the reasons set out above, I hereby order the landlords to keep the security deposit in partial satisfaction of the claim, and I hereby grant a monetary order in favour of the landlords pursuant to Section 67 of the *Residential Tenancy Act* for the balance due of \$495.00.

This order is final and binding on the parties and may be enforced.

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 07, 2012.

Residential Tenancy Branch