



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*. The landlord has provided a sworn affidavit from the process server who served the tenants. This sworn affidavit declares that the tenants were served in person on December 07, 2011.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. The landlord was permitted to provide additional evidence after the hearing had concluded to confirm serve of the hearing documents to the tenants. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to keep the tenants security and pet deposits?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord has provided a copy of the tenancy agreement in evidence and testifies that this tenancy started on March 03, 2011. This is a fixed term tenancy which was due to expire on March 02, 2012. Rent for this unit was \$1,700.00 per month and the tenants were able to pay \$850.00 on the 1st and the 15th of each month. The tenants paid a security deposit of \$850.00 and a pet deposit of \$100.00 on February 15, 2011.

The landlord testifies that the tenants failed to pay rent for June, July, August and September, 2011. The landlord testifies that the tenants were served a 10 Day Notice to End Tenancy on September 02, 2011 and moved from the rental unit without making any rent payments on or about September 04, 2011.

The landlord seeks to recover the sum of \$6,800.00 in unpaid rent and seeks permission to apply the tenants' security and pet deposits in partial satisfaction of this debt.

The landlord testifies that the tenants caused damage to the garage doors. The landlord has provided photographic evidence showing extensive dents in the garage doors. The landlord testifies that they found the landlords pool balls lying in the grass around the garage doors and he testifies that the tenants' children also played Lacrosse and some of the dents appear to have been made by the pool balls and Lacrosse balls. The landlord seeks to recover the sum of \$329.00 plus tax for this damage.

The landlord testifies that the tenants have also damaged two interior doors with what appears to be dents caused by balls being thrown against the doors. The landlord has also provided photographs of these doors in evidence and seeks to recover the sum of \$196.00 plus tax for this damage.

The landlord testifies that the tenants smashed a pane of glass in the kitchen window. The whole window had to be replaced at a cost of \$104.00 plus tax.

The landlord testifies that he had left an antique Pepsi machine in the unit and he found the glass panel in this machine was also smashed by the tenants. The landlord seeks to recover the sum of \$104.00 plus tax for this repair and has provided photographic evidence of the broken glass panel.

The landlord testifies that he had to pay \$78.80.00 for a process server to serve the tenants with a 10 day Notice and \$112.00 for a process server to serve the tenants with

the hearing documents as they did not provide a forwarding address. The landlord has provided additional evidence as to his costs in engaging legal services to deal with this matter but has not filed a claim to recover these sums.

Analysis

The tenants did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

From the evidence provided by the landlord I am satisfied that the tenants have failed to pay rent for June, July, August and September, 2011 to the sum of **\$6,800.00**. The landlord has therefore established his claim for a Monetary Order for this amount pursuant to s. 67 of the Act.

With regards to the landlords claim for damages; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for damages does not meet all of the components of the above test. The landlord has not submitted sufficient evidence to support their claim that all of these damages exists particularly the damages to the kitchen window. The landlord has provided insufficient evidence to show that these damages were caused by the actions or neglect of the tenants and insufficient evidence to show the actual amount spent to rectify the damages. Furthermore the costs incurred by the landlord for the process server to serve documents to the tenants is deemed to be a cost of doing business as a landlord. Consequently, I find that the landlord has failed to fully satisfy the above test, and the landlord's claim for damages cannot succeed and is dismissed.

As the landlord has been partially successful with their claim I find the landlord is entitled to recover the **\$100.00** filing fee from the tenants pursuant to section 72(1) of the *Act*.

The landlord is entitled to keep the tenants security and pet deposits totaling **\$950.00** pursuant to s. 38(4)(b) of the *Act*. No Interest has been accrued on these amounts in 2011. The security and pet deposits have been applied in partial satisfaction towards the unpaid rent. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$6,800.00
Plus filing fee	\$100.00
Less security and pet deposits	(-\$950.00)
Total amount due to the landlord	\$5,950.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$5,950.00**. The order must be served on the respondents and is enforceable through the Provincial Court 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 14, 2012.

Residential Tenancy Branch