

## **DECISION**

Dispute Codes      MND, MNR, 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 an agent for the landlord and both tenants.

During the hearing the tenants requested the landlord provide copies of the receipts for cleaning and painting. With the tenants' permission I requested copies of these receipts be submitted to me as well.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; liquidated damages; cleaning and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on April 25, 2011 for a 1 year fixed term tenancy beginning on July 1, 2011 for a monthly rent of \$1,969.00 due on the 1<sup>st</sup> of each month with a security deposit of \$975.00 paid on May 31, 2012. The tenancy agreement included a clause requiring the tenant to pay liquidated damages in the event the tenants end the tenancy prior to the end of the fixed term;
- A copy of the tenants' letter dated August 23, 2011 advising the landlord of their intention of vacating the rental unit effective September 30, 2011;
- Copies of listings on Craigslist and Kijiji posting the availability of the rental unit beginning in late August;
- A copy of a new tenancy agreement signed by the landlord and a third party on November 2, 2011 creating a new tenancy for the dispute address with new tenants beginning on November 15, 2011 for a rent of \$1,700.00 per month;
- A copy of a Condition Inspection Report completed at both the start and end of the tenancy showing the flooring throughout the unit needs cleaning; that kitchen and bathrooms required cleaning. The report indicates the tenants had agreed for the landlord to retain the security deposit; and
- A receipt for carpet cleaning in the amount of \$250.00.

The landlord seeks the following compensation:

Description	Amount
Lost revenue – October 2011 Rent	\$1,969.00
Lost revenue – ½ November 2011 Rent and ½ month's loss due to lower rent amount	\$1,119.00
Lost revenue – December 2011 – June 2012	\$1,883.00
Liquidated Damages	\$500.00
Cleaning	\$336.00
Painting	\$140.00
Carpet Cleaning	\$250.00
<b>Total</b>	<b>\$6197.00</b>

The landlord's agent testified that the owner's of the property decided to advertise the rental unit for both rental and for sale once they received the tenants' notice to end the tenancy. The tenant's assert that because of this approach the landlord limited potential tenants who might consider entering into a tenancy if the property were to sell.

The tenants testified that while they were still in the rental unit not one potential tenant was shown the rental unit but that 2 to 3 showings per week were conducted for potential buyers.

The landlord indicated the painting required cost the landlord \$280.00 but they were only seeking ½ of this amount from the tenants. The landlord provided no testimony as to why it was required and there is nothing in the Condition Inspection Report indicating that any painting was required.

The tenants also question the amount that was required for general cleaning; that it seems excessive, but they did not dispute the condition of the unit as described in the Condition Inspection Report. The tenants do not dispute they agreed for the landlord to retain the security deposit for the liquidated damages, carpet cleaning and general cleaning.

The tenants questioned the landlord's agent in regard to the receipt for carpet cleaning in that it states "clean all carpets and suite". The tenants were concerned as to whether this amount was for cleaning the suite that was rented to someone else. The agent testified that it must have been an error as there still were tenants in the suite at the time these tenants vacated their 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 their testimony, the tenants agreed to have the landlord retain the security deposit to cover the liquidated damages clause; carpet cleaning and general cleaning.

As the tenants provided no evidence or disagreement with the condition of the unit at the end of the tenancy, I find the landlord incurred a loss by the tenant's failure to leave the unit reasonable clean at the end of the tenancy as is required under Section 37 of the *Act*. I also find the landlord has established the value of that loss through the submission of invoices and receipts.

In the absence of any testimony or evidence confirming the need for painting, I find the landlord has failed to establish that a loss was suffered and if there was that it was the result of a violation of the *Act*, regulation or tenancy agreement. I dismiss this portion of the Application.

Section 45 of the *Act* states a tenant may end a fixed term tenancy no earlier than the date specified in the tenancy agreement as the end of the tenancy. In the case before, from the tenants' testimony and the landlord's evidence I find the tenants breached Section 45 by ending the tenancy prior to the end of the fixed term.

Residential Tenancy Policy Guideline #3 states a landlord may be granted damages for lost rent in an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. Section 7 of the *Act* requires the party making a claim against the other party for breaching the *Act* must do whatever is reasonable to minimize the damage or loss.

The Guideline goes on to say that attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale. While this point speaks to a circumstance where the landlord tries to sell the property only, in the case before me the landlord was trying to rent and/or sell in an attempt to mitigate any losses from this tenancy.

While I accept that it is possible that potential tenants may not consider a home of this nature if they know that it is also for sale, I find the tenants have failed to provide any evidence to support their submission that, in this case, this approach impacted the landlord's ability to re-rent the unit in a timely fashion or for the rent obtained under the new tenancy agreement.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$6,157.00** comprised of \$4,971.00 lost revenue; \$500.00 liquidated damages; \$336.00 cleaning; \$250.00 carpet cleaning and the \$100.00 fee paid by the landlord for this application.

In accordance with the previous agreement from the tenants, I order the landlord may deduct the security deposit and interest held in the amount of \$975.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$5,182.00**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord 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: March 19, 2012.

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Residential Tenancy Branch