



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with applications from the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent 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 his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord 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 landlord confirmed that he received the tenants' mailed February 11, 2012 written notice that they were not planning to take occupancy of the rental unit. The tenants confirmed that on February 25, 2012 they received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on February 23, 2012. The landlord confirmed that he received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on March 2, 2012. I am satisfied that the parties served each other with the above documents and their written evidence for this hearing 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? Are the tenants entitled to a monetary award for losses arising out of this

tenancy? Which of the parties are entitled to the tenants' security deposit? Are either of the parties entitled to recover their filing fees from the other party?

Background and Evidence

The landlord entered into written evidence a copy of the Residential Tenancy Agreement (the Agreement) signed by the parties on February 7, 2012. According to the terms of this fixed term Agreement, the tenants were to take occupancy of the rental unit on February 15, 2012. The Agreement was scheduled to end on the last day of February 2013. Monthly rent was set at \$1,300.00, payable in advance on the first of the month (after February 2012). The tenants were to be responsible for paying for heat and hydro. The parties agreed that the landlord continues to hold the tenants' \$650.00 security deposit paid on February 7, 2012 when the tenants signed the Agreement.

The parties also agreed that the tenants never moved into the rental unit. Although the tenants gave the landlord a rent cheque for one-half month's rent for the period from February 15, 2012 and a full month's rent cheque for March 2012, the tenants cancelled payment on these cheques.

The tenants entered oral and written evidence to explain that they did not take occupancy of the rental unit when one of the tenants' cars was scratched badly by someone's keys in the underground parking garage for this rental property. The tenants entered oral and written evidence that this "keying" of the tenants' vehicle occurred on February 11, 2012, while the male tenant was conducting work to replace bathroom floor tiles in the rental unit before the tenancy began. The landlord gave undisputed oral testimony that the parties had agreed that the male tenant would replace these tiles in exchange for a monthly rent reduction of \$50.00 which resulted in the \$1,300.00 monthly rent for the rental unit.

The landlord's original application for a monetary award of \$1,950.00 included:

- \$650.00 for unpaid rent for last half of February 2012;
- \$1,350.00 for loss of rent for March 2012;
- \$50.00 for recovery of landlord's filing fee for his application.

At the hearing, the landlord amended the amount of his requested monetary award to \$1,350.00 to reflect his rental of the premises to another tenant as of March 15, 2012 for the same \$1,300.00 monthly rent that he was to have obtained from the tenants, again for a one-year fixed term. The landlord's amended application for a monetary award was for recovery of \$650.00 in unpaid rent for February 2012 and \$650.00 for loss of rent for March 2012, plus the \$50.00 filing fee.

The tenants applied for a monetary award of \$2,842.52. In addition to the tenants' request to obtain the return of their security deposit, the tenants applied for a monetary award to compensate them for the damage to the vehicle they parked in the underground parking garage of this rental property. They also maintained that the "keying" of their car on February 11, 2012 raised concerns in their minds as to the safety of the parking garage and this neighbourhood. They asked that the keying incident be considered a legitimate reason for their refusal to take possession of the rental unit and that they be released from their obligations under the Agreement. They entered into written evidence a binder of material, including photographs, receipts and documents that they maintained demonstrated their entitlement to their requested monetary. They itemized their application for a \$2,842.52 monetary award as follows:

Item	Amount
Return of Security Deposit	\$650.00
Estimated Damage to their Vehicle	2,042.52
Work Performed by Male Tenant to the Bathroom in the Rental Unit (4 hours @ \$30.00 per hour = \$120.00)	120.00
Reimbursement of Address Change for BC Hydro	30.00
Total of Requested Monetary Award	\$2,842.52

Analysis – Landlord's Application for a Monetary Order

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 16 of the *Act* establishes that the rights and obligations of a landlord and a tenant take effect from the date that they enter into a tenancy agreement "whether or not the tenant ever occupies the rental unit." As there is undisputed evidence that the Agreement was signed on February 7, 2012, the tenants' obligations under that Agreement commenced on that date.

I find that the tenants were in breach of their fixed term Agreement because they failed to take occupancy of the rental unit and cancelled payment on the rent cheques they supplied to the landlord for this tenancy. The tenants' concerns about the safety of the parking garage after their car was vandalized did not entitle them to waive the obligations they entered into when they signed the fixed term Agreement. The landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their Agreement and the *Act*. 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 evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises once he received the tenants' letter advising him that they were not intending to take occupancy of the rental unit. He testified that he placed an advertisement on a popular rental website and was successful in locating a new tenant on or about March 10, 2012 for a one-year fixed term tenancy commencing on March 15, 2012. As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' losses.

As the tenants have not complied with the terms of their Agreement, I find that the landlord is entitled to recover \$650.00 in unpaid rent for February 2012 and \$650.00 in his loss of rent for the first two weeks of March 2012. I allow the landlord to retain the tenants' security deposit plus applicable interest in order to partially offset the monetary award issued. No interest is payable over this period. As the landlord has been successful in his application, I allow the landlord to recover his filing fee.

Analysis – Tenants' Application for a Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the damage to the tenants' car which occurred before their tenancy commenced is a matter between them and their automobile insurers. At the hearing, the female tenant testified that they did not have sufficient insurance on the damaged vehicle because they were in the process of selling it. They have not repaired the vehicle and have not submitted any receipts to demonstrate that they are entitled to a monetary award against the landlord. I dismiss this element of the tenants' application for a monetary award without leave to reapply as I find no basis for obtaining the requested compensation from the landlord.

There is undisputed testimony that the landlord agreed to reduce the tenants' monthly rent by \$50.00 in exchange for the work that the male tenant was planning to undertake to install tile on the bathroom floor. The landlord testified that the work that was done by the male tenant was incomplete and required additional work after the tenants advised him that they would not be occupying the premises. Other than their oral agreement to reduce the monthly rent to \$1,300.00, there is no written agreement between the parties

in which the landlord committed to pay the male tenant for his labour in replacing the tiles. The landlord also provided undisputed oral testimony that he obtained and provided the bathroom tiles that the tenant was installing. I dismiss this portion of the tenants' application for a monetary award without leave to reapply as I accept the landlord's undisputed oral testimony that this work was already factored into the monthly rent arrived at between the parties to the Agreement.

I dismiss the tenants' claim for recovery of the address change costs they incurred without leave to reapply because I do not find the landlord in any way responsible for the tenants' decision to not take occupancy of the rental unit. As I find that the landlord is entitled to retain the tenants' security deposit, I also dismiss the tenants' application to obtain the return of their security deposit from the landlord. I dismiss the tenants' claim to recover their filing fee for their application as they have not been successful in their application for dispute resolution.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms which allows the landlord to recover unpaid rent, losses arising out of this tenancy and the filing fee for his application and to retain the tenants' security deposit.

Item	Amount
Unpaid Rent – Last Half of February 2012	\$650.00
Loss of Rent – First Half of March 2012	650.00
Less Security Deposit	-650.00
Recovery of Landlord's Filing Fee for his Application	50.00
Total Monetary Order	\$700.00

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.

I dismiss the tenants' application without leave to reapply. 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: April 26, 2012

Residential Tenancy Branch