



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 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*, sent via registered mail on February 29, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. 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 damage to the unit?
- Is the landlord entitled to a Monetary Order to recover unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The landlord testifies that this tenancy started on March 01, 2011. This is a fixed term tenancy which was due to expire on June 30, 2012. Rent for this unit was agreed at \$1,300.00 per month and was due on the first day of each month in advance. The tenants paid a security deposit of \$650.00 on February 05, 2011. The landlord testifies the tenants vacated the rental unit on February 06, 2012.

The landlord testifies that the tenants moved out of the country and the landlord was able to determine the tenants forwarding address from an e-mail the tenants sent to the landlords real estate brokerage which contained their address.. The landlord testifies that both parties attempted to find a new tenant to take over the lease but were unsuccessful. The tenants e-mailed the landlord and informed the landlord that their Aunt would live in the unit. The landlord testifies that at no time did the landlord enter into a tenancy agreement with the tenants' aunt either verbal or written. The landlord has provided an e-mail from the tenants dated December 12, 2011 which states the tenants now do not intend to break their lease. The landlord testifies that the tenants failed to pay rent for February of \$1,300.00. The landlord posted a 10 Day Notice to End Tenancy to the tenants' door and in the tenants' mail box on February 02, 2012. This Notice indicates that the tenants have failed to pay rent for February of \$1,300.00 and utilities of \$263.81. The Notice informs the tenants that they have five days to pay the outstanding rent and utilities or file an application to cancel the Notice or the tenancy will end on February 16, 2012.

The landlord testifies that the tenants did not pay either the rent or the utilities. The landlord testifies that she attempted to re-rent the unit but was unsuccessful and believes this was because she was also trying to sell the unit. Due to this the landlord stopped advertising the unit from March 01, 2012 and does not seek to pursue the tenants for any rent beyond this date. The landlord has provided a copy of the advertisement in evidence. The landlord testifies that since the 10 Day Notice was served more unpaid utilities have been billed. The landlord seeks to recover the sum of \$262.81 for the period between December 02, 2011 and December 29, 2011; \$329.49 for the period of December 29, 2011 to February 02, 2012; and \$256.59 for the period of February 02, 2012 to February 28, 2012. The landlord testifies the tenants would still be responsible for this bill after they had vacated the unit as the heat had to be left on in the unit during the winter. The landlord testifies that when she went into the unit after the tenants had moved out the landlord found the heaters had been left on at maximum when they were only required to be left on minimum to prevent the pipes freezing. The landlord states this may account for the higher utility bill.

The landlord testifies that the tenants have been sent copies of the bills and the bills have been provided in evidence. The total amount of outstanding utilities is \$848.89.

The landlord testifies that the tenants failed to clean the unit and the landlord had to have cleaners come in to do the work. The landlord has provided a cleaning invoice showing the amount of work that was carried out and the final cost of \$412.50.

The landlord testifies that the tenants caused some damage to the interior of the unit and the tenants failed to dispose of all the garbage. The landlord testifies that she had to pay for a carpenter to repair damage to the banister and railings, and fill some dents in the wall and a doorway caused from the tenants' gym equipment. The garbage was also removed and the paint work touched up. This came to a total cost of \$330.40 and the landlord has provided an invoice from the carpenter for this work and photographic evidence of the damage, garbage and unclean areas of the unit.

The landlord seeks an Order to keep the tenants security deposit to offset against the unpaid rent. The landlord testifies that there is a clause in the tenancy agreement addendum which states the tenants will be charged a fee of \$1,000.00 if they break the lease. The landlord seeks to recover this sum as the tenants did break the lease before the end of the fixed term. The landlord agrees that she did not incur any costs to advertise the unit other than her time and effort.

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.

With regard to the landlords claim for unpaid rent; I have reviewed the documentary evidence and find that the tenants had entered into a fixed term tenancy with the landlord and the tenants ended this tenancy before the end of the fixed term. The landlord however is not pursuing the tenants for a loss of income up to the end of the fixed term because she decided not re-rent the unit after March 01, 2012. The landlord does however seek to recover unpaid rent for February, 2012.

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. The landlord has established that the tenants failed to pay rent for February, 2012 of **\$1,300.00** and consequently I find the landlord is entitled to a Monetary Order to recover this sum pursuant to s. 67 of the *Act*.

I further find the landlord is entitled to keep the tenants security deposit of **\$650.00** pursuant to s. 38(4)(b) of the *Act* and this sum will be offset against the unpaid rent.

With regard to the landlords claim for unpaid utilities, I find the landlord has provided sufficient evidence to show that the tenants failed to pay the utilities at the end of the tenancy and the landlord is therefore entitled to a Monetary Order to recover the sum of **\$848.89** pursuant to s. 67 of the *Act*.

With regard to the landlord claim for damages and cleaning of the unit; I refer the parties to s. 32 of the Act which states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. [my interpretation]. I find from the evidence presented that the tenants failed to clean the rental unit at the end of the tenancy and failed to repair the damage caused or remove the garbage from the unit. Consequently it is my decision that the landlord is entitled to recover the sums of **\$412.50** for cleaning costs and **\$330.40** for repairs and garbage removal.

With regard to the landlords claim for \$1,000.00 because the tenants broke the terms of the lease agreement; the landlord argues that this clause was in the addendum to the tenancy agreement to protect the landlord from tenants ending a tenancy before the fixed term expires. The landlord has not stated in this clause that this is a sum charged as liquidated damages. I refer the landlord to the Residential Tenancy Policy Guidelines # 4 which states, in part, that:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

With this in mind the landlord agrees that she did not incur any costs other than unpaid rent which has been dealt with separately, consequently I would deem this charge not to

be a genuine pre-estimate of a loss incurred by the landlord as in fact no losses were incurred by the landlord. This would then make this charge a penalty to the tenants and as such is unenforceable. Consequently, this section of the landlords claim for money owed or compensation for damage or loss is dismissed.

As the landlord has been partially successful with this claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*. The landlord has been issued with a Monetary Order for the following amount:

Unpaid rent for February, 2012	\$1,300.00
Unpaid utilities	\$848.89
damages	\$330.40
Cleaning	\$412.50
Filing fee	\$50.00
Less security deposit	(-\$650.00)
Total amount due to the landlord	\$2,291.79

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 **\$2,291.79**. 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: May 09, 2012.

Residential Tenancy Branch