



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, 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 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.

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 tenants confirmed that they received a copy of the landlord's dispute resolution hearing package sent by registered mail on August 31, 2012. I am satisfied that the landlord served this package and his written and photographic evidence 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? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

On July 15, 2012, the parties signed a three-year fixed term Residential Tenancy Agreement (the Agreement) that took effect on August 1, 2011. Monthly rent was set at \$2,800.00, payable in advance on the first of each month, plus utilities. The landlord continues to hold the tenants' \$1,400.00 security deposit paid on July 18, 2011.

The landlord entered into written evidence a copy of a July 19, 2012 letter from the tenants in which they advised the landlord that they were planning to end this tenancy by the last week of July 2012. Although the landlord gave his written authorization to

enable the tenants to end their tenancy by the end of July 2012, the landlord entered undisputed oral and written evidence that the tenants did not vacate the premises by July 31, 2012. As of August 3, 2012, they had not yielded vacant possession of the premises to the landlord. The landlord claimed that when the tenants abandoned the property by August 4 or 5, 2012, the tenants left many of their belongings accumulated during this tenancy on the premises and in the yard of this rental property. The landlord's wife confirmed this testimony and said that the male tenant came by the property and returned the garage remote opener on August 6, 2012.

The landlord's application for a monetary award of \$5,920.00 included the following items identified in the landlord's August 24, 2012 Monetary Order Worksheet entered into written evidence:

Item	Amount
Junk Removal	\$350.00
House Cleaning	700.00
Carpet Cleaning	336.00
Lawn and Garden Clean-up	350.00
Power Washing	202.00
Repairs- Material and Labour	350.00
Locks – Material and Labour	168.00
Unpaid Rent for Additional Occupant (\$50.00 x 12 months = \$600.00)	600.00
Unpaid Rent August 2012	2,800.00
Photos, Copies and Mailing	64.00
Total Monetary Award Requested	\$5,920.00

The landlord entered into written evidence copies of invoices, receipts, estimates and photographs to support his application for a monetary award.

The female tenant testified that the landlord asked the tenants to leave and drafted the notice to end tenancy that the tenants signed. She said that the tenants moved from the rental unit by July 31, 2012, and returned on August 1, 2012 to clean the premises. When they returned, the landlord advised them that since they had not removed all of their belongings before August 1, 2012 and had not cleaned the premises, the landlord would charge them rent for August 2012. She testified that the tenants wanted to clean the premises and remove material and debris from the property, but the landlord did not "give them a chance" to do so, and told them he wanted them to leave. At this point, the tenants stopped cleaning the premises and left the keys in the mailbox. She did not dispute the accuracy of the photographs of the condition of the premises taken by the

landlord at the end of this tenancy. She said that her husband, the male tenant, subsequently returned an additional key and the garage door remote opener.

The female tenant confirmed that the premises were much dirtier at the end of this tenancy than when the tenants took occupancy of the rental unit. She testified that the deck was dirty at the beginning of this tenancy and the carpets had not been cleaned. She also testified that the tenants felt harassed by the landlord in the final few months of this tenancy. She denied the landlord's claim that the premises were being used for a hairdressing business during part of this tenancy. She confirmed the landlord's claim that there was an additional occupant in the premises for part of this tenancy. She said that this resulted from the tenants' foster son moving in with them at one point.

Analysis

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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

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.

The tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the July 31, 2014 date specified in that agreement. However, the landlord signed an agreement with the tenants on July 19, 2012, the same date that the tenants signed their notice to end this tenancy. By this action, I find that the landlord entered into a mutual end to tenancy agreement with the tenants that allowed them to end their tenancy by July 31, 2012.

Based on the evidence before me, I find that the tenants did not yield vacant possession of the rental unit by July 31, 2012, in accordance with their mutual end to tenancy agreement. Although the tenants claim to have vacated the rental unit by that date, there is convincing evidence that many of their belongings remained in the rental unit

and on the property beyond July 31, 2012. The tenants were required to have cleaned the premises and removed all of their belongings and debris arising out of this tenancy before August 1, 2012. There is also undisputed testimony from the landlord's wife that the tenants continued to hold an extra key and the garage door opener until August 6, 2012, well after the end of July 2012, when these items were to have been returned to the landlord. I give little weight to the female tenant's claim that the landlord prevented them from cleaning the premises when they returned to conduct cleaning on August 1, 2012. This cleaning and removal of all traces of their tenancy was to have occurred prior to August 1, 2012. As that did not occur and the tenants did not pay rent for August 2012, I am satisfied that the landlord is entitled to a monetary award for loss of rent for August 2012 due to the tenants' failure to comply with the terms of their agreement to end this tenancy by July 31, 2012 and the *Act*.

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 was unable to re-rent the premises for August 2012 due to the tenants' failure to yield vacant possession of the rental unit to the landlord by July 31, 2012. The landlord was not able to re-rent the premises for August 2012, as the landlord had to undertake extensive clean-up of the premises in order to enable him to show it to prospective new tenants. I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' loss. For these reasons, I find that the landlord is entitled to a monetary award of \$2,800.00 for his loss of rent for August 2012.

There was conflicting evidence from the parties as to the condition of the rental unit at the commencement of this tenancy. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. Although the landlord testified that he conducted a joint move-in inspection with the tenants at the commencement of this tenancy, he did not enter a copy of a move-in condition report for this inspection into written evidence. The tenants testified that he never provided a copy of a move-in condition inspection report to them. The landlord said that he did not conduct a joint move-out condition inspection with the tenants because the tenants abandoned the rental unit. He did not enter into written evidence a copy of a move-out condition inspection report, although he did submit photographs and a written description of the condition of the premises at the end of this tenancy. The tenants did not dispute the landlord's claims regarding the condition of the rental unit and the rental property at the end of this tenancy.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be

issued and provided to the tenant. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy. Section 24(1) of the *Act* reads in part as follows:

Consequences for tenant and landlord if report requirements not met

24 (2) *The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord*

(a) does not comply with section 23 (3) [2 opportunities for inspection],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Responsibility for completing this report and forwarding it to the tenants rests with the landlord.

A tenant also has duties under section 37(2) of the *Act* to:

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

At the hearing, the female tenant confirmed that the tenants did not leave the rental unit in a clean condition. She also testified that the photographs entered into evidence by the landlord reflected the condition of the premises by the end of this tenancy.

In reviewing, these photographs and the landlord's list of items claimed, I find on a balance of probabilities that the tenants did not comply with the requirement under section 37(2)(a) of the *Act* to leave the rental unit at the end of their tenancy reasonably clean and undamaged except for reasonable wear and tear. The landlord's evidence, particularly the photographs, and the female tenant's oral testimony reveal that the tenants left the premises in poor condition at the end of this tenancy. The landlord incurred considerable expense to restore the premises to a condition where it could be occupied by other tenants. I find no merit to the female tenant's claim that the tenants

fully intended to clean the premises but were prevented from doing so because the landlord told them that he wanted them out of the rental unit immediately or he would charge them for a full month's rent for August 2012. By their own admission, the tenants signed a notice to end this tenancy by the end of July 2012 and had not yielded vacant possession to the landlord before August 1, 2012. In accordance with their signed notice to end tenancy of July 19, 2012, the tenants were supposed to have vacated the rental unit and cleared the premises of their belongings before August 1, 2012. When the tenants' belongings remained in the premises after July 31, 2012, and there was little sign that the tenants truly intended to yield vacant possession to the landlord, the landlord was justified in alerting them that he would claim for August 2012 rent if they failed to yield vacant possession to him. I do not accept that the tenants' claim that they left the key to the rental unit in the mailbox on August 1, 2012 constituted compliance with the terms of the written mutual end to tenancy that the landlord had agreed to on July 19, 2012. The landlord correctly expected that the tenancy would end in accordance with section 37 of the *Act* by July 31, 2012.

I find that the landlord has demonstrated his entitlement to a monetary award pursuant to section 37(2)(a) of the *Act* for damage and losses incurred as a result of the tenants' failure to leave the premises in reasonably clean and undamaged condition at the end of this tenancy. I find that the landlord obtained quotes from a number of potential companies and individuals and provided adequate explanations for his choice of each of these. He submitted receipts to demonstrate the losses he incurred for damage arising out of the tenants' actions during this tenancy. I find that the landlord is entitled to a monetary award for the following items:

- Junk Removal - \$350.00
- House Cleaning - \$700.00
- Carpet Cleaning - \$336.00

I also allow the landlord a monetary award of \$250.00 for the clean-up of the exterior of the rental property. I select this figure instead of the \$350.00 claimed by the landlord, as I am not satisfied that the tenants should be held responsible for some of the gardening and weeding costs that appear to have been included in the landlord's application for this item.

The female tenant did not deny that there was an additional occupant residing in the premises for some of the tenancy. Clause 6 of the Agreement entered into written evidence noted that the tenants were to be charged \$50.00 per month for each additional occupant residing in the rental unit. The landlord did not make his first written request for compensation of \$50.00 per month for an additional occupant in this rental unit until June 29, 2012. In the absence of any more compelling evidence regarding this

matter, I find that the landlord is entitled to a monetary award of \$50.00 for an additional occupant in this rental unit. This amount represents a charge of \$50.00 for the month of July 2012. I dismiss the remainder of the landlord's claim in this regard as I am not satisfied that he has demonstrated that he raised this issue with the tenants before June 29, 2012. As there is no evidence that an additional occupant was residing in the rental unit as of August 1, 2012, I do not find that this additional occupant charge should be applied to the landlord's claim for losses for August 2012.

I have also considered the landlord's claim for material and labour for miscellaneous repairs, the most serious of which involved the removal of an unauthorized pipe connection to a kitchen tap. The landlord entered into evidence undisputed photographic evidence to support the damage caused by the tenants' actions with respect to the pipe connection. Despite this evidence, the landlord's only evidence to demonstrate losses that have arisen as a result of the tenants' actions are limited to his estimate of the costs of replacing various items and in retaining a plumber to repair the kitchen pipes. I find that the absence of receipts and details regarding the repairs undertaken limits the landlord's entitlement to a monetary award for these items, as does the landlord's failure to provide move-in and move-out condition inspection reports. However, based on a balance of probabilities, I find it more likely than not that the landlord is entitled to a nominal monetary award of \$100.00 for the repair of items damaged during this tenancy. I make this monetary award as I find that the tenants have not complied with the requirement under section 37(2)(b) of the *Act* to leave the premises undamaged.

I dismiss the landlord's claim for reimbursement for his power washing costs without leave to reapply. I do so as I find that the landlord has not demonstrated that this cost resulted from the tenants' actions. The female tenant testified that the deck was not clean at the beginning of this tenancy and power washing is a regular maintenance task that would need to be conducted by the landlord from time to time.

I also dismiss without leave to reapply the landlord's claim for the recovery of costs for rekeying the premises and putting new locks in place. In accordance with section 25 of the *Act*, the landlord is responsible for paying all costs associated with altering the locks so that the previous tenants do not retain access to the rental unit. In addition, I note that the landlord did not provide receipts for these costs.

I also dismiss the landlord's claim for reimbursement of the costs of printing his photographs, his copying and his mailing. The only cost of this type to which he is entitled is the recovery of a portion of his filing fee. As the landlord has been partially successful in his application, I allow him to recover \$50.00 of his \$100.00 filing fee from

the tenants. I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

Conclusion

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

Item	Amount
Unpaid Rent August 2012	\$2,800.00
Junk Removal	350.00
House Cleaning	700.00
Carpet Cleaning	336.00
Lawn and Garden Clean-up	250.00
Repairs	100.00
Unpaid Rent for Additional Occupant	50.00
Less Security Deposit	-1,400.00
Partial Recovery of Filing Fee	50.00
Total Monetary Order	\$3,236.00

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant 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. 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: November 20, 2012

Residential Tenancy Branch

