



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for unpaid rent; 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; 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 November 30, 2012 to a forwarding address provided by the tenants. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants are 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 and the landlords agent appeared, gave sworn testimony, were 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, site or property?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep the security deposit?

Background and Evidence

The landlord's agent testifies that this month to month tenancy started on August 01, 2010 and ended on November 30, 2012. Rent for this unit was \$800.00 per month due on the 1st day of each month. The tenants paid a security deposit of \$400.00 on August 03, 2010.

The landlord's agent testifies that at the start of the tenancy a move in condition inspection report was completed with the tenants and this report shows that overall the unit was in a good condition. A copy of the report has been provided in evidence. The landlord's agent testifies that they went to the unit on November 28, 2012 to do a repair and found that the tenants were in the process of moving from the unit. This move was completed around November 30, 2012. The landlord's agent testifies that the tenant present was asked to do a move out condition inspection but this tenant declined as the tenant said she did not have time to do one and had to move from the rental unit.

The landlords agent testifies that when they entered the unit after the tenants had vacated they found that the unit had been left in an appalling condition. The unit was filthy and the tenants had left a large amount of garbage in the unit; a bedroom door and a bathroom door were damaged beyond repair with large holes left in the doors; a living room vertical blind had been removed and was left damaged in the unit; the carpets were left in a terrible dirty condition; a bedroom light glass dome cover was missing; and the tenants had not returned the mail box key.

The landlord's agent testifies that the landlord and the landlord's agent cleaned the unit for 10 hours and the landlord seeks to recover \$150.00 for their work. The landlord's agent testifies that they made two trips to the land fill site to remove the garbage and seek to recover \$40.00. The landlord's agent testifies that the landlord had some doors in stock and the damaged doors were replaced from stock items. The landlord therefore seeks to recover the sum of \$80.00 for the bedroom door and \$60.00 for the bathroom door. The landlord seeks to recover \$97.00 to replace the living room blind; \$160.00 to have the rugs cleaned; \$11.00 to replace the light globe cover; and \$10.00 to replace the mailbox key.

The landlord has provided photographic evidence showing the condition of the rental unit, a copy of the move in condition inspection report, and a copy of the tenancy agreement.

The landlord's agent testifies that the tenants did not give the required notice to end the tenancy. The landlord's agent testifies that the landlord started to advertise the rental unit in the local newspaper but the unit was not re-rented until February 01, 2013. The landlord therefore seeks to recover unpaid rent for December, 2012 of \$800.00.

The landlord requests an Order permitting the landlord to keep the tenants security deposit in partial satisfaction of this claim. The landlord also seeks to recover the \$50.00 filing fee from the tenants.

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 sworn testimony of the landlords agent.

With regard 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 the landlord has met the burden of proof regarding the condition of the rental unit with regard to the cleaning and damages. The landlord has also shown that this damage was caused by the tenants during the tenancy and that the tenants failed to leave the rental unit in a reasonable clean condition at the end of the tenancy. The landlords claim for cleaning the unit has therefore been upheld and the landlord is entitled to a monetary award for **\$150.00**. The landlord has also shown that the tenants caused damage to two doors, the carpet was left in a dirty condition, the light fixture was damaged and an amount of garbage was s abandoned in the unit. The landlord has not shown however that the living room blinds were damaged by the tenants.

However I find the landlord has not provided any evidence to show the actual costs incurred for the two replacement doors, trips to remove garbage at the land fill site; the

rug cleaning; the light cover; or the mail box key as required under part three of the test for damages. The landlord was given additional time to send invoices or receipts for these items but the landlord failed to provide this evidence within the stipulated time frame. Therefore I find the landlord has not met the burden of proof regarding the cost of the replacement doors, the costs at the land fill site to remove garbage, the costs for the rug cleaning; the costs to replace the blinds; the costs to replace the light cover or the costs to replace the mail box key. The landlord's application for these sections must therefore be dismissed.

With regards to the landlords claim for unpaid rent for December, 2012; I direct the parties to s. 45(1) of the *Residential Tenancy Act (Act)* which states:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

If the tenant fails to give notice to the landlord that conforms with this section of the *Act* the landlord is entitled to recover rent for the following month. I therefore find the landlord has established a claim for unpaid rent for December, 2012 and the landlord is entitled to a monetary award to the amount of **\$800.00** pursuant to s. 67 of the *Act*.

I find the landlord has established a claim to keep the security deposit of **\$400.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlord's monetary award.

I further find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

| | |
|----------------------------------|-------------|
| Unpaid rent | \$800.00 |
| Cleaning costs | \$150.00 |
| Filing fee | \$50.00 |
| Less security deposit | (-\$400.00) |
| Total amount due to the landlord | \$600.00 |

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 **\$600.00**. The order must be served on the respondent 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: March 11, 2013

Residential Tenancy Branch

