



Dispute Resolution Services

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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; for 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 landlords to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on May 07, 2013. Canada Post tracking numbers were provided by the landlords in 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*.

One of the landlords 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

- Are the landlords entitled to a Monetary Order for damage to the unit?
- Are the landlords entitled to a monetary Order to recover unpaid rent?
- Are the landlords entitled to keep the security deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testifies that this tenancy started on September 01, 2012 with these co-tenants. A copy of the tenancy agreement has been provided in evidence. This agreement shows that this was a fixed term tenancy which was due to end on May 31, 2013. Rent for this unit was \$1,500.00 per month and was due on the first day of each month. The tenants paid a security deposit of \$750.00. The tenants attended a move in condition inspection of the unit at the start of the tenancy however at the end of the tenancy the male tenant did not want to attend an inspection so the landlord did not complete the inspection report. The tenant ended the tenancy on April 22, 2013 after giving the landlord an e-mail Notice on March 16, 2013 in which the male tenant has stated that he will be moving out at the end of April. The male tenant provided the landlords with a forwarding address on April 22, 2013.

The landlord testifies that the tenant paid rent for April, 2013 and the landlords explained that they would try to re-rent the unit for May 01, 2013 however if the unit was not re-rented then the tenants remain responsible for rent for May. The landlord testifies that they placed advertisements on two internet sites and posted for rent flyers. The unit was not re-rented until June 01, 2013. The landlord testifies that the tenant signed a letter in which he gives permission for the landlord to keep the security deposit of \$750.00. A copy of this letter has been provided in evidence. The landlord seeks to recover the loss of rent for May, 2013 of \$1,500.00.

The landlord testifies that the tenants left the hardwood flooring in the unit with many scratches and the unit was left in a filthy condition. The landlords seek to apply the security deposit against the cost of cleaning the unit and repairing the scratches to the flooring.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. I refer the parties to s. 45(2) of the Act which states:

A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

As the male tenant gave Notice to end the tenancy before the date specified as the end date of the tenancy I find the landlords have therefore established a claim for a loss of rental income for May, 2013 of \$1,500.00 as the earliest time the tenants could have ended the tenancy would have been May 31, 2013.

With regard to the landlords claim for damages; 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.

The landlord testifies that the tenants agreed the landlord could keep the security deposit to cover the damages and cleaning; however this is not documented on the tenants written permission to the landlord and without any evidence to show the damages exist, that they stem from a violation on the part of the tenants; or the actual amount to rectify the damages then the landlords have not met the burden of proof. This section of the landlords' claim for damages or to offset the security deposit against damages is therefore dismissed.

With regard to the landlords claim to keep the security deposit; As the male tenant has agreed in writing that the landlords may keep the security deposit of \$750.00 I am not required to make a decision in this matter. I will however deduct the security deposit of \$750.00 from the landlord's monetary award for unpaid rent.

As the landlords have been partially successful with this claim I find the landlords are entitled to recover the \$50.00 filing fee from the tenants. A Monetary Order has been issued to the landlords for the following sum:

Loss of rental income	\$1,500.00
Filing fee	\$50.00
Less security deposit	(-\$750.00)
Total amount due to the landlords	\$800.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$800.00**. 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: July 31, 2013

Residential Tenancy Branch

