



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with the landlords' 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 or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72; and
- other unspecified remedies.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that she received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on December 18, 2013. In accordance with sections 89(1) and 90 of the *Act*, I find that the tenant was deemed served with the landlords' hearing package on December 23, 2013, the fifth day after its registered mailing. The tenant also confirmed that she received copies of the landlords' written and photographic evidence, which were also served in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to a monetary award for damage arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenant signed a one-year fixed term tenancy Agreement (the Agreement) on October 9, 2009 and the landlords signed that Agreement on October 21, 2009. When the initial term expired, this tenancy continued as a periodic tenancy. Monthly rent was set at \$1,600.00, payable in advance on the first of each month, plus utilities. The landlords continue to hold the tenant's \$1,600.00 security deposit paid in instalments by December 31, 2009.

The parties agreed that the tenancy ended on November 5, 2013, when the tenant returned her keys to the landlords. The parties also agreed that the tenant did not give any written notice to end this tenancy.

Although the landlords said that a joint move-in condition inspection was conducted on October 9, 2009, the landlords did not prepare a written report of that inspection. The landlords did not schedule a joint move-out condition inspection. While one of the landlords, MN (the landlord) conducted his own inspection of the premises after the tenancy ended and took photographs of the rental unit at that time, the landlords did not prepare a move-out condition inspection report of this inspection.

The landlords applied for a monetary award of \$3,898.00. They attached a worksheet outlining the amounts they were seeking, which totalled \$5,148.51 as of the date they filed for dispute resolution on December 9, 2013. This amount included \$350.00 in late fees owing from this tenancy, unpaid rent for November 2013, supply and material costs of \$1,948.51 and labour costs which they estimated at \$3,200.00.

Analysis

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 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. Section 52 of the *Act* requires that a tenant provide this notice in writing.

In this case, in order to avoid any responsibility for rent for November 2013, the tenant would have needed to provide her notice to end this tenancy before October 1, 2013. To avoid responsibility for paying rent for December 2013, the tenant would have needed to have given her written notice to end her tenancy before November 1, 2013.

Since the tenant did not give any notice to end this tenancy, I find that the tenant did not comply with the provisions of section 45(1) of the *Act* and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing.

There is undisputed evidence that the tenant did not pay any rent for November 2013 or December 2013. 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.

Landlord BN testified that the landlords were not able to rent the premises to another tenant for November or December 2013 because the damage caused during this tenancy was so extensive that they have yet to finish their repairs and find new tenants. He said that the tenants did place advertisements for the rental unit two or three months ago, but as the repairs continue they have been unable to re-rent the premises.

Based on the evidence presented, I accept that it would likely have taken the landlord at least a month after the tenant vacated the premises without paying rent for November 2013 to prepare the rental unit for another tenancy after this tenancy ended on November 5, 2013. Given that renting is often difficult during December 2013, I also accept that the tenant's failure to provide timely written notice to end her tenancy has also made it difficult for the landlord to rent the premises for that month. For these reasons, I find that the repairs that the landlords were undertaking in November and December 2013 discharged their duty under section 7(2) of the *Act* to minimize their loss of rent for these months. I issue a monetary award in the landlord's favour in the amount of \$1,600.00 for each of November and December 2013.

Section 7 of the signed Addendum to the tenancy agreement entered into written evidence by the landlords established that the tenant was to pay \$50.00 in late fees for any months when rent was late. The landlords submitted undisputed written evidence and sworn testimony that the tenant was late in paying her rent every month in 2013, with the exception of August 2013. I find that the landlords are entitled to a monetary of \$500.00 for the ten months when the tenant was late paying her rent during 2013 (including November 2013).

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator 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.

Although the landlords submitted an extensive list of expenses they incurred at the end of this tenancy, they did not prepare a joint move-in condition inspection report nor a joint move-out condition inspection report. Under such circumstances, it is difficult to assess the extent to which the damage claimed by the landlords arose during the course of this tenancy.

I also note that the RTB's Policy Guideline 40 establishes the useful life of various items in a residential tenancy. In this case, much of the landlord application for a monetary award for damage was for repainting the rental unit and replacing damaged flooring on the lower level. The useful life of an internal paint job is estimated at four years in Policy Guideline 40. In this case, Landlord BG testified that the rental unit was painted in August or September 2009. As the four year useful life of the 2009 painting of the premises had expired by the end of this tenancy, I find that the landlords bear the repainting costs at the end of this tenancy.

According to Policy Guideline 40, the useful life of linoleum flooring that was in the basement bathroom is estimated at ten years. Landlord BG testified that the bathroom flooring was last replaced in 2007. However, the tenant testified that the damage requiring the replacement of the bathroom flooring resulted from the landlord's failure to properly repair water damage that had been occurring from the shower in the floor above this bathroom. The tenant also gave sworn testimony that the landlord was not comprehensive in the repairs he undertook resulting in damage to the rental unit. Without proper move-in and move-out condition inspection reports, it is difficult to assess the extent to which any damage present at the end of this tenancy arose during the course of this tenancy.

Although I am unwilling to issue a monetary award in the amounts identified in the landlords' receipts, I do find that the photographs and the landlords' sworn testimony reveal that the tenant did not leave the rental premises "reasonably clean and undamaged" at the end of her tenancy. In addition to the general lack of cleanliness at the end of this tenancy, there are also a series of holes created during this tenancy, as well as evidence of a broken window and a broken door. After reviewing the photographs, the landlords' receipts, and the sworn testimony of the parties, I find that the landlords are entitled to a monetary award of \$300.00 for general cleaning and repairs that resulted from the tenant's actions during this tenancy.

At the hearing, I advised the parties that the landlords' charge of \$1,600.00 for the security deposit contravened the *Act*. Landlords are only permitted to require a security deposit that totals one-half of the monthly rent for the rental unit. I also noted that landlords cannot include in a tenancy agreement a requirement that tenants are responsible for undertaking necessary repairs, which are properly the responsibility of a landlord.

I allow the landlords to retain the tenant's \$1,600.00 security deposit plus applicable interest. No interest is payable over this period. As the landlords were successful in this application, I allow them to recover their \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to obtain a recovery of unpaid rent, loss of rent, damage and their filing fee and to retain the tenant's security deposit:

Item	Amount
Unpaid November 2013 Rent	\$1,600.00
Loss of Rent December 2013	1,600.00
Late Fees – January 2013 to November 2013 (10 months @ \$50.00 = \$500.00)	500.00
General Damage and Cleaning	300.00
Less Security Deposit	-1,600.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,450.00

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order 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: April 07, 2014

Residential Tenancy Branch

