



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 landlords 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 landlords to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on June 27, 2014. Canada Post tracking numbers were provided by the landlords in verbal testimony. The landlords testified that the hearing packages for both tenants were returned to the landlords by Canada Post as the tenants had not collected their mail. 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 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 unpaid rent?

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep all or part of the security deposit?

Background and Evidence

The landlords have provided a copy of the tenancy agreement in documentary evidence and testified that this tenancy started on February 01, 2012 for a month to month tenancy. Rent for this unit was \$1,050.00 per month due on the 1st of each month in advance. The tenant paid a security deposit of \$525.00 at the start of the tenancy. Both parties attended the move in inspection of the unit at the start of the tenancy.

The landlords testified that the tenants gave a hand written notice dated May 23, 2014 stating that this is their one month written notice. The landlords have provided a copy of this note in evidence. The landlords testified that the tenants could not pay the rent on June 01, 2014 and asked if they could pay it on June 15, 2014. The tenant failed to make this payment and on June 15, 2014 the landlords went to the rental unit and found the tenants had abandoned the unit and moved most of their belongings from the unit. There was a note left at the unit with some of the keys which stated that the landlords could keep the security deposit to cover the rent for the first 15 days of June. The landlords seek a Monetary Order to recover unpaid rent for June, 2014 of \$1,050.00.

The landlords testified that the tenants had failed to clean the unit including the carpets and window coverings. The landlords had to have the carpets cleaned at a cost of \$99.75 and the blinds were cleaned at a cost of \$60.00. The landlords have provided photographic evidence and receipts for carpet cleaning and window covering cleaning in documentary evidence.

The landlords testified that they had to pay to have the unit cleaned which comprised of cleaning the walls, the flooring, the floor vents, the kitchen cabinets, the stove and the

fridge. The landlords have provided photographic evidence and a receipt for cleaning in documentary evidence.

The landlords testified that the tenants caused damage to a door jamb and casing and a closet door was missing. This damage was not repaired by the tenants prior to ending their tenancy. The landlords had to pay to have this damage repaired and to replace the closet door. The landlords seek to recover the cost of \$186.00 for this work. The landlords have provided photographic evidence of the damage and a receipt for this repair in documentary evidence.

The landlords testified that the tenants failed to return all the keys as indicated on the move in inspection report. One key was missing and the landlords seek to recover \$10.00 for a replacement key. The landlords have not provided evidence of the actual cost incurred to replace the key.

The landlords testified that the tenants left an old television which did not work and some other junk in the storage room. The landlords had to have these items removed to the dump and seek to recover costs incurred of \$40.00 for this work. The landlords have provided photographic evidence showing the television and the junk left in the storage room and a receipt for the removal of these items in documentary evidence.

The landlords seek to recover the sum of \$25.00 for late payment of rent for June. The landlords refer to clause 10 of the tenancy agreement in which it is documented that a fee of \$25.00 will be charged in any month that rent is late.

The landlords seek an Order to keep the security deposit of \$525.00 to offset against the unpaid rent and damages and seek a Monetary Order for the balance including the \$50.00 filing fee.

Analysis

The tenants did not appear at the hearing to dispute the landlords' claims, despite having been served 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 before me. Section 26 of the *Residential Tenancy Act (Act)* states:

26 *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.*

Section 45 of the *Act* 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.

I find the Notice provided by the tenants was not sufficient under section 45 of the *Act* to end the tenancy on June 15, 2014. I further find the tenants are not entitled to pay their rent by requesting that the landlord use the security deposit as payment towards their rent. I therefore find the landlords have established a claim for unpaid rent for June, 2014 of **\$1,050.00**.

With regard to the landlords' claim for cleaning, damages and garbage removal; 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 also refer the parties to s. 32 (2) of the Act which says that tenants are required to leave a rental unit in a reasonably clean condition at the end of the tenancy. This also involves cleaning the carpets for tenancies that exceed a year and cleaning the blinds. The tenants are also required under section 32(3) of the *Act* to repair any damage caused by the tenants or the tenants' guests and to remove all of their belongings from the unit including garbage, junk or furniture.

I am satisfied from the evidence before me that the landlords have met the test indicated above for damage to the unit I find the tenants did not leave the rental unit in a reasonable clean; the tenants did not clean the carpets or blinds; the tenants did not repair the door jamb and casing and a closet door was missing; and the tenants

abandoned personal items and junk at the unit. I therefore uphold the landlords' claim for **\$695.75** comprised of the following amounts:

Cleaning - \$310.00

Carpet cleaning - \$99.75

Cleaning of window coverings - \$60.00

Repairs - \$186.00

Disposal of abandoned items - \$40.00.

With regard to the landlords' claim for a replacement key of \$10.00 The landlords are required to provide a receipt showing the actual cost incurred for replacement of the key in order to meet the burden of proof. As the landlords have failed to do so I must limit the landlords claim to **\$5.00**.

With regard to the landlords' claim to recover \$25.00 for late fees for June 2014; I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there is a clause contained in the agreement that provides for an administrative fee for late fees. Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlords are entitled to recover a **\$25.00** late fee for June, 2014.

I Order the landlords to keep the security deposit of **\$525.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlords' monetary claim.

As the landlords' claim has merit I find the landlords are entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords for the following amount:

| | |
|----------------------------------------|-------------|
| Unpaid rent | \$1,050.00 |
| Damages, cleaning and removal of items | \$695.75 |
| Replacement key | \$5.00 |
| Late fees | \$25.00 |
| Filing fee | \$50.00 |
| Less security deposit | (-\$525.00) |
| Total amount due to the landlords | \$1,300.75 |

Conclusion

I HEREBY FIND largely in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,300.75**. The Order must be served on the respondents. If the respondents fail to pay the Order, the Order 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: October 30, 2014

Residential Tenancy Branch

