# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNR, MND, MNSD

Introduction

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

- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67; and
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The landlord and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 84 minutes in order to allow both parties to fully present their submissions.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's Application.

I had not received the landlord's written evidence package, including 14 photographs, various text messages and a painting invoice, at the time of the hearing. The tenants had received and reviewed the landlord's written evidence package. Accordingly, I asked the landlord to provide me with another copy of his written evidence, including the photographs, after the hearing. The landlord stated that he would provide this evidence by October 23, 2015, but the Residential Tenancy Branch ("RTB") did not receive his evidence until October 29, 2015. I reviewed the landlord's evidence and considered it in this decision.

I amend the landlord's application pursuant to section 64(3)(c) of the *Act* to increase the monetary award sought from $847.00 to $877.00, as the tenants agreed that they had notice of the landlord's monetary claims prior to this hearing.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and 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?

Background and Evidence

The landlord confirmed that this month-to-month tenancy began on September 1, 2013 and ended on September 30, 2014. Monthly rent in the amount of $800.00 plus an additional $20.00 for laundry, was payable on the first day of each month. A security deposit of $400.00 was paid by the tenants and the landlord continues to retain this deposit. The landlord stated that the rental unit is the basement suite of a house, which is approximately 1285 square feet. A written tenancy agreement governs this tenancy but a copy was not provided for this hearing.

The landlord confirmed that no move-in or move-out condition inspection reports were completed for this tenancy. The landlord stated that the tenants provided a forwarding address by way of a text message on October 11, 2014. The tenants stated that they wrote their forwarding address on an envelope and left it on the kitchen counter with the rental unit keys on the same date, which the landlord denied.

The landlord seeks $400.00 for a loss of rent from October 1 to 15, 2014, because the tenants returned the rental unit keys late on October 11, 2014, instead of when they vacated the unit on September 30, 2014. The landlord stated that he did not intend to re-rent the property to another tenant but intended to use it as a daycare business and it was delayed because of the late return of keys and the fact that he had to repair the unit after taking possession. The tenants dispute the landlord's claim for lost rent, stating that he did not re-rent the unit and that they had until October 31, 2014 to vacate as per the landlord's 2 Month Notice. The landlord confirmed that the tenants received September 2014 rent free as per the 2 Month Notice. The tenants stated that that they asked the landlord on October 1, 2014 when they could drop off the keys and no response was received from him until the next day on October 2, 2014. The tenants noted that the landlord told them that they could return to the unit and make repairs,

leaving the keys when they were finished, which is what they did. The landlord denied the tenants' claim, indicating that he asked for the keys back immediately and the tenants did not return them.

The landlord seeks $477.00 for repairing holes in the walls of the rental unit. The landlord confirmed that the tenants made 57 holes in the three bedrooms and one bathroom of the rental unit. The tenants denied that they made that many holes, indicating that they caused some small picture nail holes, as well as removed a medicine cabinet causing bigger holes in the bathroom. The tenants noted that the other holes were there when they moved in and that because a move-in condition inspection report was not completed by the landlord when the tenants moved in, the landlord could not prove who caused which holes. Both parties agreed that the landlord asked the tenants to fill the holes. The tenants claimed that they filled the holes with white polyfill, as advised by the landlord, and they advised the landlord that painting would be required but the landlord did not care about painting. The landlord denied this statement. The landlord claimed that the tenants filled the holes with mud and that it caused more damage, requiring him to hire a painter to put in new drywall, sand and paint these areas in order to repair the holes.

The landlord provided a copy of the $477.00 invoice from the painting company, which the tenants confirmed the landlord provided to them. The date of the invoice is October 15, 2014 and the date that the work was done is October 21, 2014. A description of the work done was given on the invoice. The landlord provided photographs of the covered holes in the rental unit. The landlord indicated that the last interior painting was done in August 2013, just before the tenants began living in the rental unit in September 2013.

The landlord applied to offset the security deposit of $400.00 against the monetary order requested. The tenants requested a return of double their security deposit, totaling $800.00, for the landlord's failure to return it to them within 15 days of the end of the tenancy and providing a written forwarding address.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or

losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I find that the tenants failed to prove that they provided the landlord with a forwarding address in writing in accordance with section 88 of the *Act*. Service by way of text message is not permitted by section 88. The tenants did not provide any documentary evidence, such as a copy of the envelope, where they provided the written forwarding address to the landlord. In any event, leaving a copy of an envelope on the kitchen counter is not permitted by section 88. One of the text messages from the male tenant to the landlord on October 14, 2014, indicates "I didn't give u any address." Although the landlord confirmed receipt of the tenants' address by way of text message, the doubling provision in section 38 of the *Act* is only triggered once a written forwarding address is provided by the tenants as per section 88. Although the landlord's right to claim for damage against the deposit was extinguished under sections 24 and 36 of the *Act*, for failing to complete move-in and move-out condition inspection reports, the tenants are not entitled to double their deposit, as section 38 has not been triggered by the delivery of the written forwarding address.

Section 39 of the *Act* states that despite any other provision of the *Act*, if the tenants have not provided a forwarding address in writing, as per section 88 of the *Act*, within one year of the end of the tenancy, the landlord is entitled to retain the deposit and the tenants' right to its return is extinguished. As the tenancy ended on October 11, 2014, when the tenants returned the rental unit keys, and this hearing occurred on October 19, 2015, more than one year after the above date, the landlord is entitled to retain the tenant's security deposit of $400.00.

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. To prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Residential Tenancy Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's claim of $400.00 for a loss of rent from October 1 to 15, 2014, without leave to reapply. I find that the text messages submitted by the landlord indicate that the landlord allowed the tenants to vacate the rental unit late on October 11, 2014, in order to complete repairs. The landlord clearly offered the tenants the opportunity to repair the holes in the walls, as well as carpet cleaning and other repairs, as an alternative to the landlord hiring people to complete the repairs. The text messages submitted by the landlord from October 1 until October 11, 2014, indicate that the landlord was agreeable to the tenants having continued access to the rental unit in order to complete repairs. The landlord did not advise the tenants that he would be seeking a loss of rent for this extra time. The landlord did not communicate a sense of urgency for the return of the keys to use the unit right away. The landlord also did not re-rent the unit to other tenants after the tenancy was over. The landlord provided the tenants with a 2 Month Notice to vacate on October 31, 2014. The tenants left earlier than this date. The landlord did not provide documentary evidence that the unit would be used for a daycare, when such daycare was started and the effect of any such delay in returning rental unit keys would have on the operation of the daycare. The text messages do not communicate that the tenants' delay in returning the keys would affect the opening of the daycare. Despite the landlord receiving the keys back on October 11, 2014, no painting of the walls was completed until October 21, 2014 as per the landlord's invoice, which is ten days later. If the landlord required the unit so quickly for the daycare, presumably repairs including painting would have been done much earlier. Therefore, I find that the landlord is not entitled to a loss of rent for October 2014, as he has failed to meet the above test.

I dismiss the landlord's claim for $477.00 for repairing and painting the walls in the rental unit, without leave to reapply. The landlord only provided an invoice, not a receipt for this cost. The landlord did not provide a move-in condition inspection report or photographs to show the condition of the unit when the tenants moved in. The landlord only provided photographs after the tenants vacated. The landlord did not complete a move-out condition inspection report to show the condition of the unit when the tenants vacated. I find that the landlord was unable to show what damage was caused by the tenants in the unit and what damage was pre-existing before the tenants moved in. Although the tenants acknowledged that they caused some small picture nail holes in the wall and removed a medicine cabinet, they confirmed that they filled the holes as instructed by the landlord and as noted in the text messages. Residential Tenancy Policy Guideline 1 states that the tenants are only responsible for repairing and painting holes if there is an excessive amount. I find that the landlord failed to prove an excessive amount of holes because he did not prove the condition of the unit when the tenants moved in and the tenants disputed the landlord's claims. I find that small nail holes and the medicine cabinet holes are reasonable wear and tear, which is permitted

without the tenants having to repair these areas.  As it is the landlord's burden of proof, I find that he has failed to meet the above test.

Conclusion

I order the landlord to retain the tenants' entire security deposit of $400.00 in full satisfaction of the monetary award.

The landlord's application for a monetary order for unpaid rent and for damage to the rental unit, are dismissed without leave to reapply.

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 13, 2015

Residential Tenancy Branch