



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This decision deals with two applications for Dispute Resolution. The landlord has filed two separate applications concerning the same tenants and same issues. Therefore, I have heard both applications at this hearing as a joint hearing. The landlord seeks a Monetary Order for unpaid rent and utilities, for damages to the rental unit, for loss or damage under the Act or tenancy agreement and to recover the filing fee for this proceeding. The landlord also applied to keep all or part of the security deposit.

The landlord served the tenants in person on July 16, 2009 with two copies of the Applications and Notices of the Hearings. I find that the tenants were properly served pursuant to s. 89 of the Act with notice of the hearings.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has the landlord established a monetary claim due to the loss of rent and utilities, damage to the rental unit, compensation for damage or loss under the act, and to recover the filing fee?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

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This tenancy started on October 15, 2008 and ended on June 17, 2009. Three tenants shared the rental unit. Two tenants paid rent of \$775.00 and the 3rd tenant paid rent of \$775.00. This was a month to month tenancy and rent was due on the 15th of each month. These tenants paid a security deposit of \$ 387.50. The third tenant moved from the rental property at the end of February, 2009. Each tenant had a separate tenancy agreement.

The landlord testifies that each tenant was responsible for the whole of the monthly rent of \$1,550.00 as per their tenancy agreement. However, when the 3rd tenant moved out the landlord agreed that the remaining tenants could continue to pay half of the rent of \$775.00. The tenants and landlord continued to look for a 3rd tenant to share the property and rent but they were unsuccessful in this endeavour. On May 20, 2009 the landlord issued the tenants with a 10 Day Notice to End Tenancy for unpaid rent as she states she could no longer afford to let the tenants pay half the rent for the house. The tenants disputed this Notice and a hearing was held on July 06, 2009. As the tenants had moved from the property on June 17, 2009 their application was dismissed. On May 27, 2009 the landlord also issued the tenants with a One Month Notice to End Tenancy on or before July 14, 2009 for late payment of rent and other issues.

The landlord confirms that the tenant's rent was paid up to date by June 15, 2009. The landlord has amended her claim for rent owed as she had miscalculated her claim by doing a third split in rent for each of the three original tenants of the \$1550.00. The landlords revised claim is for unpaid for June 15 to July 15, 2009 of \$775.00. The landlord is also claiming an additional \$60.00 in rent that she claims the tenants withheld on May 15 for work the tenants did for the landlord without prior permission. The landlord is also claiming unpaid utilities of \$146.60.

The landlord testifies that the tenants have caused damage to the rental property. She claims that the tenants smoked inside the house and after they moved out she had to remove the carpets from two bedrooms and had to clean the walls and ceiling to get rid of the smell of smoke at a total cost of \$1,696.78. The landlord agrees that she had not stated on the tenancy agreement that the tenants were not to smoke in the house.

The landlord testifies that the tenants were paid to carry out some work on the yard and states that this work was to be carried out with permission from her. She claims that the tenants ripped up a walkway without permission and she had to pay a contractor to replace this at a cost of \$525.00. She also claims that the tenants left debris from trees that they had removed which also continues to be cleaned up by herself and the new tenants.

The tenants testify that after the 3rd tenant moved from the house they were not given full use of the house and remained living in the space they had previously used. There was a freezer and washer/dryer located in the basement and other than that, they did not use the basement area of the property. They state that the landlord did not conduct a move in or move out condition inspection. They state the landlord paid them to clean the house and yard when they moved into the rental property. The tenants claim that when they moved in the carpet, which they estimate to be about 25 years old, was very dirty and stained. They also testify that at no time did the landlord tell them not to smoke in the house and there was no addendum added to the tenancy agreement to this effect. The tenants claim that they moved from the rental property after being given the Notice to vacate from the landlord that stated they must move on or before July 14, 2009. They dispute that they have to pay rent to the landlord for the weeks after they moved out due to her Notice.

The tenants do not dispute that they owe \$146.60 to the landlord for utilities and have agreed to pay this amount.

The tenants testify that the landlord gave them permission to tidy the yard, remove the patio and straighten the walls. They also had to remove a Juniper bush from the patio area and found there was not enough rock to finish the patio. They were more than willing to complete the job however; they claim the landlord told them to stop the work and not to touch anything else in the yard as she was getting in contractors to do the job. The tenants dispute the landlords' testimony that this stone area was a walkway as they found when renovating the area that it was a patio which was hidden under soil and grass.

Analysis

The tenants do not dispute the amount of money owed for utilities of **\$146.60**.

I find that as the landlord issued the tenants with a Notice to End Tenancy to vacate on or before July 14, 2009 the tenants are not responsible to pay rent after the day they moved out. Therefore, I find the tenants owe rent for two days to the landlord at an amount of **\$51.66**. There is insufficient evidence to support the landlords' claim that the tenants withheld \$60.00 for work they had completed but was not agreed to by the landlord. In this instance I prefer the evidence of the tenants as to the landlord giving the tenants permission to carry out work on the yard at the outset of the tenancy.

In respect of the landlords claim for damages and loss I have applied a test to determine if she has submitted sufficient evidence to support her claim as follows:

- Proof that the damage or loss exists
- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement

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- 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 landlord. 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 that the landlords claim for compensation for damages does not meet all of the components of the above test. The landlord has not submitted sufficient evidence to support her claim in respect of the damage to the walkway/patio, to the yard, to the carpets and for the cleaning of the rental unit. The landlord did not complete a Move In or Move Out condition inspection report which would have determined the condition of the rental unit at the beginning and end of the tenancy pursuant to s. 24(2) and s. 36(2) of the Act. Section 38(5) of the Act states that a landlord's right to retain the tenant's security deposit is extinguished if they fail to comply with these sections of the Act in relation to a claim for damages. Therefore, I dismiss the landlords claim for damage to the rental property and for damage and loss under the Act without leave to reapply.

As the landlord has only been marginally successful in her claim I find she is entitled to recover half her filing fee from the tenants of **\$25.00**. I further find that the landlord may apply part of the tenant's security deposit in payment towards the amount owed of **\$223.26** and must return the balance of the security deposit to the tenants within 10 days of receiving this decision.

Outstanding rent for June 16 and 17, 2009	\$51.66
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Filing fee	\$25.00
Subtotal	\$223.26
Amount of security deposit to be returned to the tenants	\$164.24

Conclusion

I find the tenants owe rent for June 16 and 17, 2009 and utility bills as agreed upon. I find that the landlord has not established the majority of her monetary claim for outstanding rent.

I order the landlord to retain part of the tenants' security deposit in payment of the rent arrears, utilities and half share of the filing fee. The balance of the deposit must be returned to the tenants.

I find the landlord did not provide sufficient evidence to support her claim for damages or compensation for damage or loss under the Act, regulation or tenancy agreement. Therefore, I find this section of the landlords application is 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: September 02, 2009.

Dispute Resolution Officer