DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for damage to the unit, for unpaid rent or utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, was done in accordance with section 89 of the *Act*, initially sent via registered mail on January 11, 2010 and then later served personally to the Tenant on June 7, 2010 by the Male Landlord at the Tenant's residence, in the presence of a witness. Canada Post receipt numbers were provided in the Landlords' evidence along with a sworn affidavit from the witness of the personal service. Based on the submissions from the Landlords I find the Tenant was duly served the hearing documents in accordance with section 90(a) of the *Act*.

Both Landlords appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant despite her being served with notice of today's hearing, in accordance with the Act.

Issues(s) to be Decided

Are the Landlords entitled to a Monetary Order pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

Throughout their testimony the Landlords referred to their documentary evidence which included, among other things, photographs of the rental unit taken January 2nd or 3rd, 2010, a detailed list of their monetary claim, numerous emails between the Landlords and the Tenant, quotes and invoices from professional cleaners, an estimate and written description of work performed by a professional painter, emails between the

Landlords and prospective new tenants, and a copy of the tenancy agreement between the Landlords and the Tenant which was signed on January 20, 2009.

As per the written tenancy agreement the month to month tenancy was effective February 15, 2009; rent was payable on the first of each month in the amount of $1,800.00 and a security deposit of $900.00 was paid by the Tenant on January 31, 2009. The Landlords testified that the Tenant negotiated the rent down to $1,800.00 because she wanted to pay her rent in one block payment for the first six months in advance. The Tenant provided the Landlords with two certified cheques near the beginning of March 2010 which totalled $10,750.00 and was comprised of $450.00 rent for February 2009, plus $10,300.00 towards six months at $1,800.00 per month from March 1, 2009 to August 31, 2009 less a $500.00 hold back (6 x $1,800.00 minus $500.00). The Landlords argued the Tenant held back $500.00 from the rent claiming she would pay it when the Landlords completed the rest of the repairs she had requested prior to moving into the rental house.

The Landlords argued that rent was supposed to be $1,900.00 per month, as advertised, however they negotiated a reduction in rent with the Tenant to $1,800.00 if the Tenant wanted to prepay the rent in blocks of six months at time. The Landlords claim they had a verbal agreement with the Tenant that she would pay $1,900.00 per month if she reverted back to paying the rent monthly on the first of each month.

The Landlords confirmed the rental house was built in 1941, they have owned the house since November 2004, and the Tenant is the first Tenant to rent the main floor and upper level since the Landlords vacated the home after they occupied the house for four years. The Landlords stated that there was a separate suite located on the main floor that has been rented to a different tenant.

The Landlords testified that a walk through was conducted with the Tenant prior to entering into the tenancy agreement and the Tenant requested work to be completed prior to her occupying the unit with her three children. The Landlords argued that they had painted the main floor in 2008, one year prior to the Tenant moving in, and then at the Tenant's request they painted the upper level, installed new carpet down the stairs and in the hallway, installed a new lock on the back door, installed flashing around the

front door, took the passage way door out in the main floor and built a wall which was then dry-walled and painted.

The Landlords stated that they received a phone call from the Tenant in December 2009, while they were away on holidays, to advise them that she was ending the tenancy effective January 15, 2010. The Landlords argued that they did not accept the Tenant's verbal notice and referred to their evidence which supports that they told the Tenant, via e-mail on December 14, 2009, that they were not accepting her verbal notice for January 15, 2010, and that while they would attempt to re-rent the unit as quickly as possible, if it was not rented for January 15, 2010, the Tenant would be responsible for the full rent for January 2010.

The Landlords confirmed they posted the rental unit on two websites by approximately December 10, 2009 and attempted to arrange with the Tenant to show the unit to prospective tenants as early as December 17, 2009, as supported by their e-mail evidence . The Landlords testified they had about six shows and were able to re-rent the unit effective March 1, 2010 for $1,900.00 per month. .

The female Landlord testified she received a call from a friend on December 31, 2009, who told her he had driven past their rental house and saw a large moving truck in the driveway. The female Landlord stated that she attempted to contact the Tenant and after not being able to reach the Tenant the female Landlord drove over to the rental house to find that the Tenant was not at the rental unit. The Landlord e-mailed the Tenant and requested confirmation that the Tenant was vacating the unit and to set a date for the move out inspection. The Landlords did not get a response to their December 31, 2009 e-mail and when they attended the rental unit on January 1, 2010 they found the unit vacant, dirty, and the keys left inside the house.

The Landlords applied for a Monetary Order in the amount of $4,180.00 and presented the following breakdown of their claim which totals $4,710.00:

- $1,900.00 for January 2010 rent as the Tenant ended the tenancy without proper notice; and
- $500.00 which was held back from the initial lump sum rent payment that was made near the onset of the tenancy during the first week of March 2009; and

- $450.00 which was not paid for occupying the rental unit on February 15, 2009, the Tenant was supposed to pay $900.00 for February's half months rent and only paid $450.00 because she refused to move in until February 22, 2010; and
- $100.00 for September 2009 rent because this month's rent was not prepaid in a lump sum so as per the verbal agreement rent was supposed to be $1,900.00 however the Tenant only paid $1,800.00; and
- $500.00 for cleaning costs consisting of $350.00 paid to a professional cleaner on approximately January 6, 2010, plus $150.00 for six hours at $25.00 per hour for time spent by the Landlords who had to redo some of the cleaning because the professional cleaner did not do a very good job plus cleaning up the garbage, broken toys, and recycling left out in the yard by the Tenant; and
- $1,010.00 for wall repairs and painting which consists of $810.00 paid to a professional painter on January 11, 2010, who attended the rental unit over the course of four days to patch the drywall, mud, sand, and paint plus $200.00 for eight hours of the Male Landlord's time at $25.00 per hour for filling the smaller holes and touch up painting on the upper floor which was completed on the weekends during the second and third week of January 2010. The Landlords confirmed that the main floor had been painted completely in 2008 while the entire upper floor was painted just prior to the onset of the tenancy at the request of the Tenant; and
- $150.00 for the cost to replace one broken plastic blind in the dining room and one broken faux wood blind in the master bedroom. The Landlord confirmed the plastic blind was in the house when they purchased the house, and the faux wood blind was installed in 2007. Neither blind has been replaced at this time; and
- $50.00 to replace two windows that were broken in the tree house during the tenancy. The Male Landlord advised he built the tree house in 2005 and the windows were used windows at the time of construction. The Male Landlord confirmed the windows have not yet been replaced; and
- $50.00 for costs of preparing the Landlord's evidence, such as developing pictures and printing. Receipts were not provided in support of this cost.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 45 of the Act provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement. In this case the Tenant provided the notice to end the tenancy after the December 1, 2009 rent was paid, sometime during the second week of December 2009 therefore the tenancy end date is January 31, 2010 at 1:00 p.m. Had the Tenant wanted to end the Tenancy December 31, 2009, the date she vacated the rental unit, her notice would have had to been received by the Landlords no later than November 30, 2009. Based on the aforementioned I find the Landlords have proven the test for damage or loss, as listed above, and I approve their monetary claim in the amount of $1,800.00 for unpaid rent for January 2010, which is the amount listed on the tenancy agreement as the amount of rent that is payable each month.

The evidence provided by the Landlords to support their claims for $450.00 rent due for the first week of the tenancy agreement in February 2009 plus the $500.00 for the alleged hold back of rent for the lump sum payment are e-mails which began on

December 14, 2009, ten months after the tenancy began and were created after the Tenant provided verbal notice that she would be ending her tenancy. Given the evidence before me I find the Landlords have failed to mitigate this loss as they continued on with the tenancy, accepting not only the lump sum payment but also monthly payments towards rent, for nine months after the alleged short payment occurred. Based on the aforementioned I find the Landlords have failed to establish that they did whatever was reasonable to minimize their loss, therefore I dismiss their claim of $950.00 in unpaid rent.

The Landlords have claimed unpaid rent of $100.00 for September 2009 arguing that they had a verbal agreement with the Tenant that her rent would be $1,900.00 if paid monthly. In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced, if they are not an attempt at contracting out of the Act. That being said, when one party is not in attendance to confirm what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise. With respect to the $100.00 increase to the rent if paid monthly, section 43 of the Act provides that a landlord may impose a rent increase only up to the amount agreed to by the tenant in writing. As this agreement was verbal and not in writing, I find the Landlords have failed the burden of proof and I hereby dismiss their claim of $100.00 in unpaid rent.

When a tenant vacates a rental unit section 37 of the Act states that the tenant must leave the rental unit reasonable clean and undamaged. The evidence supports that the Tenant did not conduct the required cleaning at the end of the tenancy and that the Landlords hired a professional company to clean the rental unit at a cost of $350.00. Based on the aforementioned I find the Landlords have proven their claim for $350.00.

I do not accept the Landlord's argument that they paid a professional to clean the rental unit and then spent hours redoing the cleaning. One could argue that the Landlords should have had the cleaner attend a second time to do the cleaning properly or that they should not have paid the cleaner until the work was done to their satisfaction. The Landlords are claiming six hours for this second round of cleaning which includes time to clean up garbage and recycling that was left in the yard. After careful review of the photos and documentary evidence I note that the Landlords did not provide evidence to

support that there was additional cleaning required. There were no photos or evidence provided of the alleged toys, garbage or recycling left behind, plus the Landlords could not provide the dates they spent cleaning the rental unit, nor were there copies of receipts for articles that may have been disposed of at a landfill or recycling drop off centre. Therefore I find the Landlords have failed the requisite burden of proof and I hereby dismiss their claim of $150.00 for six hours of labor to complete additional cleaning.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

The photographic evidence supports the Landlords' testimony that several walls and ledges were excessively gouged and damaged. The Landlords provided evidence that the entire rental unit had been painted between 1 week and 1 month prior to the onset of the tenancy and that a major portion of the rental unit walls and ledges required repair and repainting at the end of the tenancy to the total cost of $1,010.00 which consisted of $810.00 being paid to a professional painter plus $200.00 for eight hours labour for the male Landlord who completed the minor patching repairs and touch up painting. Based on the aforementioned I find the Landlords have proven the test for damage or loss, as listed above, and I approve their claim of $1,010.00 for repairs and painting.

The Landlords have claimed $150.00 for damage caused to two blinds, one which was in the house when the Landlords purchased the property and the other which was installed in 2004. The Landlords confirmed that neither blind has been repaired or replaced. There is no evidence before which verifies the actual amount required to compensate for the damage rather the Landlord's have estimated their loss to be $150.00. Based on the aforementioned I find the Landlords have failed to prove the test for damage or loss and I hereby dismiss their claim.

The two broken windows from the tree house that are being claimed have not been replaced and where recycled or used prior to being installed in the tree house when it was built in 2005. Based on the aforementioned, the Landlords have failed the burden

of proof required to verify the actual cost of the damage and therefore I dismiss their claim.

In relation to the claim for $50.00 for costs to prepare the application and evidence, such as photocopying and photographs, I find that the Landlords have chosen to incur these costs which cannot be assumed by the Tenant. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of Act. Therefore, I find that the Landlords may not claim costs to prepare their evidence, as they are costs which are not denominated, or named, by the *Residential Tenancy Act.*

The Landlords have been partially successful with their application, therefore I award recovery of the $50.00 filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Unpaid rent for January 2010	$1,800.00
Professional cleaning of the rental unit	350.00
Wall repairs and painting	1.010.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	**$3,210.00**
Less Security Deposit of $900.00 plus interest of $0.00	-900.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	**$2,310.00**

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **$2,310.00**. The order must be served on the respondent and is enforceable through the

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: June 17, 2010.

Dispute Resolution Officer