DECISION

Dispute Codes MND, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords seeking a monetary order and to recover the filing fee.

The female Landlord and female Tenant appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Are the Landlords entitled to a monetary order for damages to the rental unit and to recover the filing fee?

Background and Evidence

Under the written tenancy agreement, this tenancy was to begin on December 15, 2009, on a month to month basis, monthly rent was $1,000.00, payable on the 1st day of the month and a security deposit of $500.00 was paid. I heard testimony that the tenancy actually began on or about January 1, 2010, ended in the last week of August 2010 and that the security deposit was used by the Landlords for one half of the rent for January 2010, at the Tenants' request.

The Landlords' claim is for the following:

December 2009 rent (15th-31st)	$500.00
Repaving of the driveway	$2,484.00
Cleaning solutions for driveway	$20.04
Oil lift	$27.99
Drain opener	$11.14
Filing fee	$50.00
Total	**$3,093.17**

In support of the Landlords' claim, I heard testimony from the female Landlord that the Tenants caused large oil stains and spills on the driveway in and around the premises, including in front of the rental unit. The Landlord testified that the Landlords have tried

unsuccessfully to clean and remove the oil stains and they have been told by a paving expert that the only solution is repaving.

The Landlord testified that during the course of the tenancy, the Tenants were asked to park their vehicles away from the home due to the oil leaks, but that the problem persisted. The Landlord testified that the subject of the oil leaks was an ongoing source of conflict during the tenancy, among other issues.

The Landlord further testified that after the walk through and the Tenants' vacancy of the rental unit, the Landlords noticed an oil spill and a sludge-like material coming from the bathtub, causing a back up of the water system.

The Landlords supplied receipts of the cleaning solutions, an estimate from the paving company, the tenancy agreement, a 10 Day Notice to End Tenancy for Unpaid Rent and photos of the rental unit and premises.

Upon query, the Landlord stated there was no move in or move out condition inspection report nor had the driveway been re-paved.

I heard testimony from the female Tenant denying that the Tenants' vehicles were the source of the oil leaks and that the Landlords and their guests parked in those spots. The Tenant testified that their vehicles were parked away from the driveway on a government easement and that they rarely used the space.

The Tenant denied creating an oil spill around the premises and further denied putting any substances in the bathroom tub. The Tenant pointed out that they shared the same water system as the Landlords. The Tenant further pointed out that the pictures in evidence were taken after they vacated the premises and not during the walk through.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Awards for compensation are provided under sections 7 and 67 of the Act. In order to be successful in obtaining an award for compensation such as rent reduction, it is not

enough to allege a violation of the Act, regulations or tenancy agreement by the other party. Rather, the Applicants/Landlords must establish all of the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 23(3) of the Act requires a landlord to offer a tenant at least 2 opportunities to complete a condition inspection at the start of the tenancy.

Section 35 of the Act, among other things, requires a landlord to offer a tenant at least 2 opportunities at the end of the tenancy to complete a move-out condition inspection.

While I accept that there are some oil stains on the driveway and premises, I find the Landlords have submitted insufficient evidence to establish and meet steps 1 and 2 of their burden of proof. I find the Landlords have neither sufficiently proven the condition of the driveway before the tenancy nor that they have suffered a loss due to the oil stains. The appearance of the driveway is esthetic in nature, but the driveway is still usable and I find this has not caused a loss to the Landlords. Therefore I **dismiss** their claim for **$2,484.00** for repaving and **$48.03** for cleaning of the driveway.

Further without an outgoing condition inspection report I find the Landlords have failed to establish that the Tenants created a backup and caused a sludge-like material to come from the bathtub. Therefore I **dismiss** their claim for **$11.14**.

As to the Landlords' claim for $500.00 for December 2009 rent, I find that the tenancy agreement is unclear as to the Tenants' obligations for that month as to rent payments. The terms indicated the monthly rent was $1,000.00 per month and that the payments were payable on the 1st day of the month. I find the Landlords agreed to allow the Tenants to move in on January 1, 2010, instead of December 15, 2009.

Residential Tenancy Policy Guideline 3 states that if the Landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant.

The Landlords issued a 10 Day Notice to End Tenancy to the Tenants on August 1, 2010, which listed the amount of alleged unpaid rent of $1,000.00 for August 2010. Therefore I find the Landlords through their actions led the Tenants to believe they had permission to move in on January 1, 2010, and I further find that the Landlords have never put the Tenants on notice that they intended to make a claim for the December 2009 rent. I therefore **dismiss** their claim for **$500.00.**

I find that the Landlords are not holding a security deposit as it was used to pay for one half of the rent for January 2010, and therefore the Tenants are not entitled to a return of their security deposit.

As the Landlords were not successful with their application, I find they are not entitled to recover the filing fee.

For the reasons cited above, I dismiss the Landlords' Application in its entirety, without leave to reapply.

Conclusion

The Landlords' Application is dismissed.

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: February 25, 2011.

Residential Tenancy Branch