Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking a Monetary Order for unpaid rent, for money owed or compensation for damage or loss, and to recover the cost of the filing fee from the tenants.

Although each tenant was served with the Application for Dispute Resolution and Notice of Hearing by registered mail on April 1, 2011, the tenants did not appear at the hearing. The landlord supplied testimony of the tracking number to each tenant, testified that the mail was sent to the address at which the tenants resided and successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the tenants' absence.

The landlord appeared, gave affirmed testimony, and was provided the opportunity to present her evidence orally and in documentary form.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

This one year, fixed term tenancy originally began on September 15, 2010, was to end on September 14, 2011, the monthly rent was $1,450.00, and according to the landlord and evidence, the tenancy ended on February 28, 2011. The tenants paid a security deposit of $725.00 and a pet damage deposit of $200.00.

The Landlord's claim is in the amount of $1,728.53, which includes loss of rent for the first two weeks in March due to the tenants' insufficient notice to end tenancy, in the amount of $697.50, house cleaning for $237.50, carpet cleaning in the amount of $134.40, handyman services for $312.01, and the hydro bill for $347.01.

The landlord testified and supplied photos of damage to and of the unclean state of the rental unit and receipts for the handyman services, for the cleaning of the rental unit and for the carpet cleaning. The landlord also supplied a one page hydro bill and email transmissions between the landlord and tenant, one in which the tenant gave a notice to end tenancy, dated February 17, 2011, effective for February 28, 2011.

The landlord also supplied email transmissions between the parties, discussing the hydro bill, which had been in the tenants' names, with the tenants requesting the landlord put in her name and collect from the other tenants. These emails also mentioned a request from the landlord to the tenant for $1,000.00 in a deposit.

The landlord testified that the tenants had caused damage to the rental unit, which required an extensive amount of cleaning and repair in order to be able to re-rent the unit.

The landlord testified that the tenants did not clean the carpet when leaving and left the carpet dirty and stained.

The landlord stated it was not possible to advertise the rental unit prior to the tenants leaving as they had not provided a written notice. Additionally, after vacating the premises, the rental unit had to be repaired and cleaned before a new tenant could move in.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by

taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the Landlord to prove damage or loss.

Section 45 (2) of the Residential Tenancy Act requires a tenant to give notice to end a fixed term 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,
>
> (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
>
> (c) 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 am satisfied, based on the unopposed testimony of the landlord and evidence, that the tenants provided insufficient notice under the Act to vacate, causing the landlord to incur a loss of rent for the first two weeks in March 2011, in the amount of $697.50.

I find the landlord provided sufficient evidence of the damage to and of the unclean state of the rental unit caused by the tenants and, due to the lack of evidence from the tenants, I find that the landlord has established a **monetary claim** in the amount of **$684.02**, for handyman services, carpet cleaning and general cleaning.

As to the hydro charges, I find that the landlord has submitted insufficient proof of unpaid utilities owed by the tenants by providing only one page of a hydro bill. I find a one page document does not sufficiently meet the burden of proof. The tenancy agreement was not placed into evidence and the landlord provided inconclusive evidence that the tenants had not paid a deposit, or that the other tenant had shared in the costs. Further, I was not provided information as to what percentage of the hydro for which the tenants were responsible.

I therefore **dismiss** the landlord's claim for hydro in the amount of $347.01.

Due to her largely successful application, I find that the landlord is entitled to recover the filing fee of $50.00.

I find that the landlord has established a **monetary claim** in the amount of **$1,429.52**, comprised of lost rent of $697.50 for the first two weeks of March, 2011, handyman services, carpet cleaning and general cleaning in the amount of $682.02 and the filing fee of $50.00.

As to the security and pet damage deposits, the evidence and testimony of the landlord supports that the tenants provided the landlord with their forwarding address on March 8, 2011. Although the tenants communicated their forwarding address in an email transmission, I accept that this method of communication was the preferred method of communication between the parties, as demonstrated by the landlord's evidence. It was also this transmission which gave the landlord an address upon which to serve the tenants.

Section 88 of the Act does not recognize email transmission as an acceptable method of a delivery of documents.

However, section 71 of the Act permits that I may make an order that a document not served in accordance with section 88 was sufficiently served. The provision of section 71 is discretionary and in this case, due to the above reason, I order that the delivery of the tenants' forwarding address through the March 8, 2011, email, sufficiently served.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord ***must*** repay the security deposit, to the tenant with interest ***or*** make application for dispute resolution claiming against the security deposit. [Emphasis added]

The failure to comply with this section entitles the tenants to receive double their security and pet damage deposit.

The landlord did apply for dispute resolution; however the landlord did not apply to keep all or part of the security or pet damage deposit. The application was for a monetary order for money owed or compensation for damage or loss and for unpaid rent.

Therefore the tenants are entitled to a return of their security deposit of $725.00, doubled, and pet damage deposit of $200.00, doubled, in the amount of **$1,850.00**.

I therefore **offset** the landlord's monetary claim of **$1,429.52** with the tenants' monetary entitlement of **$1,850.00**.

I **direct** that the landlord return to the tenants the balance of the security and pet damage deposit in the amount of $420.48 ($1,850.00 less $1,429.52). I **grant** the tenants a monetary order under section 67 of the Act for the amount of **$420.48.**

I am enclosing a monetary order for **$420.48** with the tenant's Decision. This order is a **legally binding, final order**, and it may be filed in the Provincial Court (Small Claims) should the landlord fail to comply with this monetary order.

Conclusion

The landlord has established a monetary claim of **$1,429.52.**

The tenants have an entitlement of $1,850.00, for their security and pet damage deposit, doubled.

The landlord's monetary claim is offset against the tenants' entitlement and the tenants are granted a monetary Order for $492.70.

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: July 29, 2011.

Residential Tenancy Branch