

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### 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 utilities and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The male tenant testified that he left a copy of the tenant's written notice to end this tenancy in the landlords' mail slot on April 1, 2011. The landlords submitted written and oral evidence that the tenants left their written notice to end this tenancy for them on April 3, 2011. The landlords said they received the tenants' notice to end the tenancy the following day.

The male tenant confirmed that the landlords gave the tenants the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on April 4, 2011. The male tenant confirmed that the tenants received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on May 13, 2011. I am satisfied that all of the above documents were provided to one another well in advance of this hearing and that the landlords served their documents to the tenants in accordance with the *Act*.

Although the landlords said that they enclosed a copy of all of their written with their dispute resolution hearing package, the tenants testified that they did not receive all of this documentation. At the hearing, I reviewed each portion of the landlord's written evidence to ensure that the tenants either had in their possession all relevant documents or were aware of these documents. The only substantive document that the tenants did not have in their possession were copies of two Fortis BC gas bills for the duration of their short tenancy. The tenants did not dispute the landlords' claim that they did not pay anything towards their shared gas bill for their tenancy, but noted that they did not receive these bills from the landlords. The landlords confirmed the amounts of these bills and testified that the tenants were responsible for the pro-rated

amounts of these bills totalling \$18.91 for the tenants' portion of the landlords' \$77.65 gas bill to March 4, 2011 and \$68.94 of the landlords' \$137.88 gas bill for the period ending on April 4, 2011. The only other documents provided by the landlords that the tenants did not possess involved confirmation of the service of documents or testimonials from other tenants. I advised the parties that I would not be considering these latter documents in reaching my decision as they had little if any relevance to the issues before me.

#### Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent, utilities and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

#### Background and Evidence

The parties signed a Residential Tenancy Agreement for this month-to-month tenancy on January 30, 2011. This tenancy was to commence on March 1, 2011, when the tenants were to pay \$1,400.00 on the first of each month in advance. The tenants were also responsible for one-half of the utilities for this property. One of the landlords and the male tenant also signed a Rental Agreement Addendum (the Addendum) containing the following terms which were attached to the Residential Tenancy Agreement.

1. *Landlords agree to have washer and dryer machines installed in upstairs suite by March 15 2011.*
2. *Tenants agree to pay \$500.00 of the electrical costs no later than April 1 2011.*
3. *Landlords will be responsible for replacing kitchen counter, electrical outlets, and upstairs toilet*

Although this Addendum was dated January 30, 2010, it is clear from the other evidence that this date was in error and should have been dated January 30, 2011.

The landlords continue to hold the tenants' \$700.00 security deposit paid on February 15, 2011. Although the tenants were supposed to pay a \$150.00 pet damage deposit, the landlords gave undisputed oral testimony that the tenants never made this payment. While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlords claim and my findings around each are set out below.

The landlords applied for a monetary award for unpaid rent for April 2011 and for loss of rent for May 2011. They provided oral and written testimony that they commenced efforts to advertise the availability of the rental unit on April 17, 2011, after the tenants vacated the rental unit on April 14, 2011. They said that they signed a new rental agreement with a new tenant on May 10, 2011 who began paying \$1,300.00 in monthly rent on June 1, 2011.

The landlords applied for a monetary award of \$3,487.85 for the following items:

<b>Item</b>	<b>Amount</b>
Unpaid April 2011 Rent	\$1,400.00
Loss of Rent for May 2011	1,400.00
Tenants' Failure to pay for Electrical Work as agreed in the Addendum	500.00
Fortis BC Gas Bills	87.85
Recovery of Filing Fees	100.00
<b>Total Monetary Award Requested</b>	<b>\$3,487.85</b>

The tenants maintained that the landlords did not comply with their written and oral commitments. They also claimed that the landlords' failure to provide them with a copy of the joint move-in condition inspection report breached their contractual agreement. They issued their notice to end this tenancy within 30 days for these reasons. The male tenant asserted that the landlords did not complete the work on the kitchen counters until the end of March 2011. The tenants also claimed that the landlords did not supply the electrical outlets that they were supposed to provide. They also provided the following list of oral commitments that the landlords had not provided.

1. Doorbells
2. No water connection to the fridge
3. Washer and dryer are not properly balanced
4. Bathroom fan was not replaced
5. No blind at patio door in kitchen/dining room
6. Closet doors were fixed with the exception of the master bedroom
7. 2 outlets in the kitchen are still not operational
8. Cleaning crew was never brought in

The landlords confirmed that they had made some oral commitments, but noted that there was no time frame for completing these commitments. One of the landlords, RD, confirmed that two kitchen outlets were not completed before the tenants vacated the rental unit. He said that there were three other functioning kitchen outlets. He testified that the two kitchen outlets have now been installed and are functional.

The female tenant confirmed that the tenants did not pay anything towards the April or May 2011 rent for this rental unit. She also confirmed that the tenants did not pay any of the \$500.00 payment set out in the Addendum for electrical work. The male tenant said that the landlords made an oral commitment to furnish copies of invoices or receipts for this work. However, he agreed that the written contract did not require the landlords to provide such records in order to entitle them to this \$500.00 payment.

#### Analysis –Unpaid Rent and Loss of Rent

I find little merit in the tenants' assertion that the landlords' failure to provide copies of signed move-in condition inspection reports in a timely fashion constituted a breach of their contractual agreement. Subsections 23(4) and (5) of the *Act* do require landlords to complete condition inspection reports and provide copies to the tenants. However, if this does not occur, the remedy is to disentitle the landlord from making a claim for damage against the tenants' security deposit (s. 24(2)(c) of the *Act*). As the landlords did not submit any claim for damage to the rental unit, this has no bearing on the landlords' application.

Since I do not accept that the landlords breached a material term of this tenancy, the tenants were subject to the notice provisions of the *Act* in ending this periodic tenancy. In accordance with section 45(1)(b) and 52 of the *Act*, the tenants could only avoid responsibility for rent for May 2011 if they provided written notice to end this tenancy before April 1, 2011 (i.e., the day before the day in the month that rent was payable under their Residential Tenancy Agreement). Since they did not provide their written notice to end this tenancy to the landlords until either April 1 or April 3, 2011, I find that the tenants did not comply with the *Act* in refusing to pay rent for April and May 2011.

In accordance with section 7(1) of the *Act*, the tenants are responsible for compensating the landlords for their rental losses. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises as soon as the tenants vacated the rental unit. Although the landlords had issued a 10 Day Notice to the tenants that could take effect on April 18, 2011, the tenants had issued their own notice to end tenancy. The tenants did not identify a specific date when they were intending to end their tenancy, only referring to it in their letter as a 30 day notice. As outlined above, a valid 30-day notice served by the tenants on April 1, 2011 or April 3, 2011 could only take effect by May 31, 2011. Since the landlords would not have known until the tenants vacated the rental unit that they would be obtaining clear and vacant possession of the rental unit by mid-April 2011, I am satisfied that the landlords took reasonable measures to re-rent the

premises in a timely fashion. As such, I find that the landlords have discharged their duties under section 7(2) of the *Act* to minimize the tenants' loss.

For these reasons, I issue a monetary award in the landlords' favour in the amount of \$1,400.00 for each of April and May 2011 to compensate the landlords for unpaid rent and loss of rent for April 2011 and May 2011.

#### Analysis – Landlords' Claim for Reimbursement for Electrical Work

At the hearing, the tenants questioned why the landlord had not provided receipts, invoices or work orders to verify the amount spent on the electrical work performed on their rental unit. The contractual agreement between the parties does not require the landlord to provide copies of these documents in order to qualify for the \$500.00 payment for electrical costs due on April 1, 2011. The tenants confirmed that they did not honour their contractual obligation to make this payment to the landlord by April 1, 2011. However, the Addendum also places a contractual obligation on the landlords to replace the electrical outlets (as well as the kitchen counter, upstairs toilets, and the washer and dryer).

Based on the oral testimony of the parties, I find that both parties did not fulfill all of their contractual obligations as set out in their Addendum. Landlord RD confirmed the tenants' assertion that two of the five electrical outlets in the kitchen were not completed during this tenancy. Since the tenants were to pay for the landlords' electrical costs by April 1, 2011, I find it reasonable that the tenants would expect that this work would be completed by the landlords by that date. As this did not occur by that date, I find that the tenants did not receive full value for the \$500.00 in electrical work that they committed to obtain in the Addendum. Since Landlord RD said that they had three of the five kitchen electrical outlets working during their tenancy, I find that the tenants should only be responsible for 3/5 of the \$500.00 in electrical costs charged in section 2 of the Addendum. For this reason, I issue a monetary award in the landlords' favour in the amount of \$300.00 as partial compensation for the tenants' failure to comply with their contractual obligation to make a payment for electrical work no later than April 1, 2011. In coming to this determination, I acknowledge that some of the electrical work may have extended to other portions of the rental unit. However, based on the evidence before me, I find that the most significant portion of the electrical work appears to have been directed at the kitchen and as such, this forms the basis for the monetary award for this item.

#### Analysis- Other Monetary Considerations

I also issue a monetary award in the landlords' favour in the amount of \$87.85 for unpaid Fortis BC gas bills. The tenants confirmed that they were responsible for ½ of

the utility bills for their short tenancy and that they did not make any payments towards these costs. Since the utility bills submitted by the landlords only extended to April 4, 2011, it would seem that if anything the landlords' claim for \$87.85 in unpaid gas bills may underestimate the total utility costs incurred by the tenants during their six-week tenancy.

I have also given consideration to the tenants' assertions that the landlords did not fulfill oral and written commitments that they made during their tenancy. I do not accept that the landlords' failure to complete all of the renovations and/or improvements as quickly as the tenants would have liked constituted a breach of this Residential Tenancy Agreement. However, based on the oral and written evidence, I do accept that the tenants did not receive full value for at least some of the services and facilities that they expected to receive when they entered into this tenancy. As such, I reduce the amount of the monetary award issued in the landlord's favour in the amount of \$150.00 to recognize these somewhat reduced services.

As the landlords have been successful in their application, I allow them to recover their \$50.00 filing fee for their current application from the tenants.

I allow the landlords to retain all of the tenants' \$700.00 security deposit plus interest in partial satisfaction of the monetary award issue in this decision. No interest is payable over this period.

### Conclusion

I issue a monetary award in the landlords' favour in the following terms which allows the landlords to recover unpaid rent and utilities, loss of rent, their filing fee for this application, and a portion of a contractual commitment made by the tenants in the Addendum to their Residential Tenancy Agreement.

<b>Item</b>	<b>Amount</b>
Unpaid April 2011 Rent	\$1,400.00
Loss of Rent for May 2011	1,400.00
Tenants' Responsibility for a portion of the Electrical Work in the Addendum	300.00
Fortis BC Gas Bills	87.85
Less Reduced Services & Facilities During this Tenancy	-150.00
Less Security Deposit	-700.00
Recovery of Filing Fees	50.00
<b>Total Monetary Order</b>	<b>\$2,387.85</b>

This Order also allows the landlords to retain the tenants' security deposit in partial satisfaction of the monetary award issued in the landlords' favour.

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*.