



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on July 04, 2014 to the address at which the male tenant resides. Canada Post tracking numbers were provided by the landlords in documentary evidence. The male tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*. The landlord attending testified that she did not know if the female tenant also lived at the same address as the male tenant. As there is insufficient evidence to prove that the female tenant resides at the same address then I am unable to determine that the female tenant has been served the hearing documents pursuant to s. 89 of the *Act* and any Orders issued will be in the name of the male tenant only.

The female landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent or utilities?

- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords permitted to keep all or part of the security deposit?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The landlord testified that this month to month tenancy started on October 15, 2008. Rent for this unit was \$1,695.00 per month due on the 1st of each month. The tenants paid a security deposit of \$860.00 on October 08, 2008. The landlord agreed that they did not complete a move in condition inspection with the tenants at the start of the tenancy. The landlord testified that the tenants vacated the rental unit on or about May 16, 2014 without informing the landlords and without providing a forwarding address. The landlord testified that they were able to determine where the male tenant was living as they saw his car and then knocked on the door and spoke to the male tenant's new landlord who confirmed the male tenant was residing in the basement unit.

The landlords have claimed \$5,113.94 but have limited this claim to \$5,000.00 comprised of the following:

Item 1. Unpaid rent up to May 15, 2014	\$4,195.00
Item 2. Damages and cleaning	\$868.94
Item 7. Filing fee	\$50.00
TOTAL	\$5,113.94

The landlord testified that the tenants never paid the full amount of rent each month and paid in installments. The landlord calculated the unpaid rent during the hearing as \$3,370.69 comprised of the following:

November, 2013 - \$800.00 outstanding

December, 2013 - \$695.00 outstanding

February, 2014 - \$1,695.00 outstanding

March, 2014 there is a credit of - \$555.00

April, 2014 there is a credit of - \$265.00

May, 2014 - \$1,695.00 outstanding

The landlord testified that there were also fees applied for late fees and NSF fees; however, the tenant had made some payments towards these fees in their rent payments but the landlord was unable to calculate how much had been paid so later withdrew their claim for late fees and NSF fees.

The landlord testified that the tenants caused some damage to the unit. The landlords have provided a list of items that required repair; however, with the exception of the new locks which had to be changed at a cost of \$44.98 as the tenants had not returned the keys; the damage to the walls which required repair and painting at a cost of \$68.46; Silicone Be Gone to remove glue at a cost of \$5.99; grout removal as tiles were damaged at a cost of \$21.59; and tile spacers at a cost of \$4.22, the landlord attending the hearing was unable to provide information relating to what the remainder of the repairs claimed were or how these items had been damaged through the actions or neglect of the tenants.

Analysis

The male tenant did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords' documentary evidence and sworn testimony before me. With regard to the landlords' claim for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied with the evidence before me that the tenants owe rent of **\$3,370.69**.

Consequently, I find the landlords are entitled to a Monetary Order to recover this amount pursuant to s.67 of the *Act*.

With regard to the landlords' claim for damages and cleaning; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- 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;
- 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 respondent. 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 does not meet all of the components of the above test. The landlords have not submitted sufficient evidence to support their claim of \$868.94.

The landlords have insufficient evidence to prove that the tenants caused damage to the unit through their actions or neglect. The landlord attending was unable to provide testimony relating to all the items included on the list for repairs and as no further corroborating evidence was provided the majority of the landlords' claim for damages must be denied. The exception to this is the claim for new locks of \$44.98 as tenants are required to return keys at the end of a tenancy and failed to do so; the photographic evidence shows damage to the walls which has been filled and required painting at a cost of \$68.46; glue left in the unit which had to be removed with Silicone Be Gone at a cost of \$5.99; and for the repair to the tiles for grout and spacers at a cost of \$21.59 and \$4.22. Consequently I have limited the landlords claim and a Monetary Order has been issued to the landlords for **\$145.24** pursuant to s. 67 of the *Act*.

As the landlords' claim has some merit I find the landlords are entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*.

I Order the landlords to keep the security deposit of **\$860.00** plus accrued interest of **\$3.00** pursuant to s. 38(4)(b) of the *Act*. A Monetary Order has been issued to the landlords for the following amount:

Unpaid rent	\$3,370.69
damages	\$145.24
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$863.00)
Total amount due to the landlords	\$2,702.93

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$2,702.93**. The Order must be served on the male respondent. If the male respondent fails to pay the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

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: November 19, 2014

Residential Tenancy Branch

