



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' application under the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for unpaid rent, 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 the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Both landlords appeared and provided testimony. The tenant AJ (the "tenant") attended and confirmed he was authorized to speak for both co-tenants.

As the parties were both in attendance I confirmed that there were no issues with service of the landlords' application for dispute resolution and the evidentiary materials. The tenant confirmed receipt of the landlords' application package. I find that the landlords served the tenant with the application for dispute resolution and evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for damages and loss as claimed? Are the landlords entitled to retain all or a portion of the security deposit for this tenancy? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in November, 2012. The landlords and tenants prepared a condition inspection report at the start of the tenancy. The monthly rent at the end of the tenancy was \$925.00. A security deposit of \$425.00 was paid by the tenants and is still held by the landlords.

The tenants vacated the rental unit in accordance with a 10 Day Notice to End Tenancy for Unpaid Rent, on August 31, 2016. The tenants did not participate in a move-out inspection despite being given opportunities to do so by the landlords. The landlord completed a move-out condition inspection report without the tenants' participation. The tenants did not provide the landlord with a forwarding address.

The landlords testified that the rental unit was left in disrepair and considerable costs were incurred to repair, clean and fix the rental unit. The landlord claims the total amount of \$5,796.12 as follows:

Item	Amount
Unpaid Rent June-Aug, 2016	\$2,575.00
Cleaning Costs	\$346.50
Garbage Removal	\$190.00
Carpet Replacement	\$675.87
Door Repair and Replacement	\$315.48
Heating Unit Replacement	\$201.61
Painting	\$169.48
Labour and Supplies	\$397.18
Loss of Rental Income Sept, 2016	\$925.00
TOTAL	\$5,796.12

The parties agreed that the tenants failed to pay the monthly rent in full for June, July and August, 2016 and the total arrears for this tenancy is \$2,575.00.

The landlords submitted into written evidence detailed receipts of the costs of cleaning, photographs to show the condition of the rental unit as well as written explanations of why they chose the method of repair or cleaning. The tenant disputed the landlords'

claims, stating that the cleaning and repairs the landlord claims are excessive. The tenant said that the rental unit was dirty when the tenancy initially began. The tenant testified that a written statement prepared by earlier tenants, submitted into written evidence by the landlords, stating that the rental unit was left in a clean condition to be fabricated and made under duress. It was the co-tenant, WJ who attended the move-in inspection and signed the condition inspection report indicating that there were no issues with the condition of the rental unit at the start of the tenancy. The tenant had no explanation as to why no damage would be noted on the report if they were present at the start of the tenancy.

The landlords testified that due to the condition of the rental unit and the various repairs that were required the rental unit could not be rented out. The landlords said the repairs and cleaning took over a month and they were only able to get a new occupant into the rental unit as of November 1, 2016.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The parties agree that the tenants failed to pay the rent for the months of June, July and August, 2016. The tenant testified that he agrees with the landlord's calculation that the rental arrear is \$2,575.00. I therefore, issue a monetary award in the amount of \$2,575.00 for unpaid rent for this tenancy.

I find the landlords have provided sufficient evidence of the monetary loss and damage arising as a result of the tenants' actions. I accept the landlords' evidence that they suffered damage and loss in cleaning and repair costs. I find that the receipts and invoices submitted into written evidence accurately show the amount of the loss. I accept the landlords' testimony that they reviewed options for repairs and cleaning and chose the most cost effective methods to minimize their loss.

I do not find the tenant's testimony that the rental unit was in a state of disrepair at the start of the tenancy to be particularly credible. The condition inspection report

submitted into written evidence shows that the co-tenant, WJ did not identify issues with the state of the unit. Furthermore, I find it unlikely that the tenants would not have alerted the landlord to broken doors, holes in the wall and burnt out heating issues during the tenancy. I find it unreasonable that the tenants would have moved in to a rental unit with holes in the walls and doors, stained floors and discolored walls without making some mention of it in the move-in inspection report. I find it more likely that the damage occurred after the tenants took possession in 2012.

I accept the landlords' calculations for the damage and loss suffered as \$2,296.12 and accordingly, issue a monetary order in that amount.

I accept the landlords' evidence that the repairs and cleaning for the rental unit required the rental unit to be taken off the market for a period of time. I accept the landlord's claim that they suffered a loss of rental income during the period they were unable to rent the unit to a new occupant. Accordingly, I issue a monetary award in the landlord's favour in the amount of \$925.00, the equivalent of one month's rent, for loss of rental revenue.

As the landlords' application was successful, I find that the landlords are entitled to recover the filing fee for this application, in the amount of \$100.00.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenants' security deposit of \$425.00 in partial satisfaction of the monetary award issued in the landlords' favour.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$5,471.12 under the following terms, which allows the landlords to recover the unpaid rent, the cost of repairs and cleaning, and the filing fee for their application:

Item	Amount
Unpaid Rent June-Aug, 2016	\$2,575.00
Cleaning Costs	\$346.50
Garbage Removal	\$190.00
Carpet Replacement	\$675.87
Door Repair and Replacement	\$315.48
Heating Unit Replacement	\$201.61
Painting	\$169.48

Labour and Supplies	\$397.18
Loss of Rental Income Sept, 2016	\$925.00
Filing Fee	\$100.00
Less Security Deposit	-\$425.00
TOTAL	\$5,471.12

The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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: July 4, 2017

Residential Tenancy Branch