



# **Dispute Resolution Services**

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** MND, MNR, MNSD, MNDC, FF

### **Introduction**

This matter dealt with an application by the landlord for a monetary order for unpaid rent and damages to the rental unit. The landlord also seeks to retain the security deposit to satisfy all or part of the monetary order and an order to recover the filing fee for the cost of this application.

The landlord and one of the tenants appeared at the hearing which was held via teleconference. Both parties had the opportunity to present evidence and I advised both parties that I would consider their oral testimony as well as any written documentation that had been submitted prior to the hearing.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary order for unpaid rent and for damages to the rental unit and if so in what amount?

Is the landlord entitled to retain any or all of the security deposit?

### **Background and Evidence**

The evidence at the hearing is that the tenancy commenced on September 1, 2006 and that on July 17, 2006 a security deposit of \$300.00 was paid.

The landlord's evidence is that the tenants vacated the premises on or about August 3, 2008 and that rent in the amount of \$622.00 is owed for August 2008. The landlord also claims damages of \$117.97 for carpet cleaning and \$140.00 for garbage removal.

The landlord has submitted some documentary evidence including some photographs, including two notices to end tenancy and other evidence. Included in that documentation is a request dated August 25 (marked received August 27) for a return of the security deposit, which includes a forwarding address. There is also a notice to end tenancy with an effective date for vacating of July 31, 2008.

The landlord's claim for a monetary order is that the unit was not re-rented until the end of August and as such he suffered a loss of revenue. The landlord did not present any evidence that he had taken measures to mitigate this loss by seeking to advertise the unit for earlier occupation. The landlord also admitted that there had not been a move out inspection, nor had he attempted to contact the tenant as required to attempt to arrange such an inspection. I note that the photos submitted by the landlord relate to other items other items such as blinds, stove and doors.

The tenant's evidence is that they vacated the unit prior to July 31, 2008. The tenant states that she made repeated phone calls to the landlord asking for a move out inspection but had no response. The tenant also states that the carpet was not clean when she moved in and was damaged due to roof leakage of which the landlord was aware of. The tenant's evidence is that the unit was left in a clean state.

### **Analysis**

I find that the tenant's were given a notice to end tenancy effective July 31, 2008 and as such the landlord should have taken measures to re-rent the property for that date. The landlord's evidence is that the tenants left him a message that they would not move out. I accept that the tenants did vacate on July 31, 2008 and as such the landlord should have taken some measures to mitigate his loss and tried to rent the unit as soon as possible. The onus is upon the landlord to demonstrate that at the hearing, and that has not been done. I decline to accept the landlord's claim for loss of revenue for August 2008.

In relation to the alleged damage to the rental unit, the landlord admits that he did not comply with the requirements of the Residential Tenancy Act by attempting to arrange, on at least two occasions, a move out inspection of the rental unit. The evidence of the tenant is that she did request this of the landlord via telephone. The onus is upon the landlord to carry out that requirement and I find that his failure in this instance has negated the tenant's rights to be able to dispute the landlord's allegations in a proper manner. I do not find that the landlord's claim for damages to the rental unit has been established.

### **Conclusion**

I decline the landlord's request for loss of revenue and for damages to the rental unit and find that the landlord is not entitled to retain any or all of the security deposit in relation to this application. I also decline to award the cost of this application.

I dismiss the landlord's application.

Dated: October 24, 2008