



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: MN, SD, OP, FF

Introduction

This hearing was convened upon the application of the landlord seeking a monetary order, an order to retain the security deposit and recovery of the filing fees. The landlord says the tenants have now moved and she no longer requires an Order of Possession for unpaid rent.

All parties gave evidence under oath.

Background and Evidence

The evidence is that this tenancy started approximately August 1, 2008 and ended sometime in September 2008 when the tenants vacated the rental unit. The rent was \$700.00 per month and the tenants paid a security deposit of \$350.00 on or about August 1, 2008.

The landlord says the tenants left owing rent of \$400.00. The landlord says that pursuant to the tenancy agreement the tenants also owe \$100.00 in late fees.

Further, the landlord says the tenants did not properly clean the rental unit. The landlord says she had to pay \$105.00 for carpet cleaning and \$150.00 for a cleaning lady. No receipts were provided in evidence. A Condition Inspection Report was provided in evidence but it shows that it was only completed at move in, not at move out. The landlord says she gave the tenants two notices to complete the report but they did not respond. The landlord did not provide copies of the notices given to the tenants.

The tenants say the carpets were not cleaned until shortly after they moved into the rental unit and the rental unit itself was not cleaned when they moved in. The tenants say they were forced to sign the tenancy agreement which states they must pay \$100.00 for late payment fees and \$10.00 per day thereafter. The tenants say this is contrary to what the Act allows but they were forced to agree to this term as the landlord was refusing to rent to them otherwise.

The landlord says that “everyone” charges similar late fees.

The tenants say they paid \$400.00 toward the \$700.00 due for rent for September and therefore only owe \$300.00 and will pay a \$25.00 late fee as allowed by the Act.

Analysis & Findings

The landlord is seeking a monetary order for rent and cleaning costs. The landlord must therefore meet the burden of proof that she paid for these items and that they were necessary. With respect to the rent I find that the evidence shows that the tenants owed \$300.00 in rental arrears.

With respect to the late payment fees charged the *Residential Tenancy Act* Regulations state in part:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or
(e) unless the tenancy agreement provides for that fee.

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I find that the landlord has contracted outside of the Act with respect to late payment fees and therefore the late payment clause is unenforceable. The claim for late fees is therefore dismissed.

I find that the landlord has provided insufficient evidence to establish her claim for carpet cleaning or house cleaning costs amounting to \$255.00 however I will allow a nominal sum of \$25.00 for cleaning costs.

Having been partially successful in her claims I will allow the landlord to recover the sum of \$25.00 of the filing fee paid for this application.

The landlord holds a security deposit of \$350.00 with interest that sum is now valued at \$351.08. I direct therefore that the landlord retain this sum in full and final satisfaction of her claims.