

Dispute Resolution Services

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

DECISION

Dispute Codes:

MNDC, MNSD, OPR, MNR, FF

Introduction

This hearing was convened in response to applications filed by both the tenant and the landlord.

The tenant seeks a monetary order for money owed or compensation for damages or loss under the act, as well as to allow the tenant to reduce rent. The tenant vacated the rental unit on March 16, 2009. The tenant's updated claim at the time of the hearing is as follows:

Cleaning of unit (at outset of tenancy)	300
Lost day's wages (at outset of tenancy)	100
Extra day for moving truck (at outset of tenancy)	100
Storage fees / per month (December 08, January 09, February 09, March 09 @ \$100 per month, as per agreement with owner)	400
Tenant's Total claim	900

The landlord seeks an order of possession due to unpaid rent, a monetary order to recover rental arrears and inclusive of recovery of the filing fee associated with this application. As the tenant vacated the rental unit this decision will only address the monetary. The landlord's updated claim on application is as follows:

Total of arrears in rent to end of February 2009 (\$200 for January @ \$950 February 09)	1150
Late fee for February 09	25
Unpaid rent for March 09	950
Late fee for March 09	25
Projected Revenue loss for April 09	950
Filing fee for this application	50
Landlord's Total claim	3150

Both parties appeared and participated in the conference call hearing and gave evidence under oath.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on December 1, 2008. Rent in the amount of \$950 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$475, and a pet damage deposit in the amount of \$475. The tenant vacated the rental unit on March 16, 2009.

The landlord's testimony is that the tenant failed to pay all the rent for January 2009 and on January 14, 2009 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant further failed to pay rent in the month of February and March 2009. The landlord testified that they came to know of the tenant's eventual departure from the rental unit on or about March 20, 2009 ("recently late last week"). The landlord further testified that they are in agreement with the verbal arrangement between the tenant and the owner of the property that the tenant is permitted to \$100 per month as compensation for unavailable storage for the rental unit.

The tenant's testimony is that he waives all claims to the security and pet damage deposits towards partial compensation for the landlord's monetary claims. His claims for cleaning the rental unit at the outset of the tenancy, as well as for lost wages and an additional day of truck rental are not substantiated by complementary evidence to substantiate these monetary claims. However, communication between the parties and an incomplete start of tenancy inspection report is submitted, in which the landlord confirms the rental unit was not fully vacated on the move in day and as a result was also not cleaned.

Analysis

Based on the testimony of both parties I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant did not pay the outstanding rent and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

As to the tenant's claim, I concur with the agreement between the tenant and the landlord in respect to the \$100 per month rent reduction for the 4 months of occupancy. I therefore must find that the tenant is entitled to **\$400** in this regard.

There is no evidence forwarded by the tenant for their claim of lost wages or for additional truck rental. Therefore I dismiss this portion of the tenant's claim.

I prefer the tenant's submission and evidence and find that on the preponderance of probabilities that cleaning of the rental unit was required at the outset of the tenancy; therefore, I find the tenant's claim for cleaning costs as reasonable, and I find their nominal estimate, in their submissions, of **\$250** as a reasonable amount in this regard. Therefore, the tenant's total entitlement claim is **\$650**.

The landlord has established a claim for **\$2100** in unpaid rent to the end of March 2009, as well as late fees in the amount of **\$50**. Section 7 of the Residential Tenancy Act places an onus on the landlord to mitigate revenue losses by making reasonable efforts

to minimize any loss. In this case, the landlord served the tenant with a Notice to End the tenancy for unpaid rent, or eviction, and was in a position to forecast the rental unit's

availability to the market. The landlord did not forward evidence of reasonable mitigation of future revenues. I dismiss this portion of the landlord's claim with leave to reapply, if necessary. As the landlord has been partially successful in their application they are entitled to recovery of the **\$25** filing fee, for a total entitlement of **\$2175**.

Conclusion

I order that the landlord retain both the security and the pet damage deposits and interest of **\$951.21** in partial satisfaction of the claim. Consequently, I will make an order to reflect the following:

Landlord's total entitlement	2175.00
Tenant's total entitlement	-650.00
Security and pet damage deposits	-951.21
Monetary Order to Landlord	573.79

I grant the landlord an order under section 67 for the balance of \$573.79. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated March 23, 2009