

# Dispute Resolution Services

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

## **DECISION**

### **Dispute Codes:**

MNR, MNSD, MNDC, MND, FF,O

### **Introduction**

This hearing was convened in response to an application by the landlord for an order of possession for unpaid rent, a monetary order for the unpaid rent, an order to retain the security deposit in partial satisfaction of the monetary claim, for damage to the rental unit, for money owed or compensation for damage or loss under the act, regulation or tenancy agreement and to recovery of the filing fee associated with this application. The landlord also seeks to have a previous order associated with this hearing be varied or set aside.

As the tenancy ended over seven (7) months ago, this decision will only deal with matters pertaining to the monetary claims. In addition, as the distribution of the security deposit, which the landlord is claiming in this application, was previously determined in adjudication dated November 21, 2008 and amended December 24, 2008; this decision cannot, and will not deal with this portion of the landlord's claim. Further, this decision cannot set aside or vary an order born of the decision dated November 21, 2008 and amended December 24, 2008. Therefore, this decision will only deal with the balance of the applicant's monetary claims, on their merits.

The landlord and tenant both participated in this hearing and each had previously provided submissions. Both parties were cautioned that their submissions to the Branch were grossly late, having been provided only two (2) days prior to the hearing. The landlord was advised that many of his submissions were illegible and their relevance to his claims were difficult to ascertain. Each party stated they had received one another's submissions and desired to proceed on verbal testimony and bring this matter to final resolution. On this basis, the landlord was asked to clearly state the essence of his monetary claims on application, which he confirmed as follows:

Unpaid rent and utilities for month of September 2008 (\$560 + \$130 + 15 (- \$245 which was paid) =	460.00
Newspaper advertisement costs for period of 09/02/08 to 09/30/08. (note: Includes a previous balance carried over of \$61.11).	204.30
Restoring suite from cigarette and cigar smoke residue	710.00
General Cleaning of rental unit	300.00
Professional cleaning of carpets	80.00
Replacing of lock keys not returned	180.00
Total of extra rent and utilities for alleged dual occupancy for approx. 4 months	720.00
Filing fee for this application	50.00
<b>Total of landlord's monetary claim</b>	<b>2704.30</b>

### **Issues to be Decided**

Has the landlord established, on a balance of probabilities, that he has suffered a loss due to the tenant's neglect or failure to comply with the Act?

If so established, did the landlord take reasonable steps to mitigate the loss?

Is the landlord entitled to the monetary amount claimed?

The burden of proving loss and damage rests on the claimant, and there is an obligation upon the claimant to have acted reasonably to mitigate or minimize the loss.

### **Background and Evidence**

Testimony provided by both parties contrasted in most respects, and in some testimony there was agreement. The agreed facts before me are as follows:

- The tenancy began on December 01, 2007 and ended September 10, 2008. Rent was payable in advance in the amount of \$560 for rent, \$130 for utilities and \$15 for cable, and due on the first day of each month.
- The parties entered into a written tenancy agreement for a fixed term ending August 30, 2008. The parties subsequently verbally agreed to continue the tenancy on a month to month basis from September 01, 2008
- On September 01, 2008 the landlord served the tenant with a Ten Day Notice To end for unpaid rent effective September 11, 2008.
- The tenant vacated on September 10, 2008 and paid the landlord a total of \$245 for rent and utilities (\$230 – being one third (1/3) of rent and one third (1/3) of utilities for the month of September) plus \$15 for cable.

The landlord testified that:

- He is landlord for several rental units.
- He is owed the balance for September's rent and utilities in the amount of \$460.
- He advertised the suite subsequent to the tenant vacating it in an effort to rent it for October 01, 2008, which he claims he did not. He provided an invoice for \$204.30 for advertising costs.
- When the tenant vacated, there was smoking residue throughout the suite and he had to "restore" the suite, painting it – for which he has provided his own receipt cost of \$710.
- After the tenant vacated the suite, the landlord claims it required extensive general cleaning for which he is claiming his own cost at \$300. The landlord did not provide Start of Tenancy or End of Tenancy inspections results. The landlord provided some photographs purporting to some issues in the suite.
- The carpets required cleaning and it is stipulated in the tenancy agreement that on vacating the suite the tenant is required to have the carpets "professionally cleaned". He has provided his own receipt in the amount of \$80.

- The tenant did not return keys; therefore he had to replace all the locks – for which he has provided his own receipt in the amount of \$180.
- In the landlord's determination the tenant had his girlfriend living with him for "months", "evidenced by her car being parked there overnight... witnessing the girlfriend carrying in groceries , and, one has to conclude she was using up extra utilities." Landlord is claiming costs for an additional tenant totalling \$720.

The tenant's testimony is as follows:

- The tenant agrees he began renting the suite as of September 01, 2008 on a month to month basis; however;
- He could not avoid *not* paying his rent on September 01, 2008 and accepted to vacate when he received a Ten (10) Day Notice to End, on September 01, 2008, and the landlord refused to take his rent the same day.
- He is a smoker; but, neither he nor any of his visitors or guests has ever smoked in the rental unit. He was fully aware of this prohibition from the outset of the tenancy and he vehemently denied that the suite required, "restoration due to smoke damage". He always smoked outside of the suite and claims the landlord himself observed him smoking outdoors.
- The rental unit was thoroughly cleaned before he vacated, and was left in better condition than when he moved in. He was pressured by the landlord to consent to the landlord retaining the security deposit, but strongly opposed it at the time of his move out. Tenant provided original photographs showing the rental unit on completion of cleaning after the suite was vacated.
- He did not have the carpets professionally cleaned.
- He returned all keys to the landlord, and does not recall otherwise.
- No other person than he ever permanently occupied the rental unit. His girlfriend would sometimes stay with him, but always returned to reside at her own living arrangement. At no time did she move any of her belongings into the suite, and does not deny they may have returned to the suite with purchases in hand.

## **Analysis**

Based on the testimony of both parties I find the parties established a month to month tenancy as of September 01, 2008. He failed to pay rent on the 1<sup>st</sup>. I find that the tenant was served with a notice to end tenancy for non-payment of rent on September 01, 2008. The tenant only paid one third (1/3) of the rent for September 2008 and did not apply to dispute the notice. In this regard the landlord has established an entitlement to the balance of rent for the month of September 2008 in the amount of **\$373.33** (the remaining 2/3). The tenant has provided receipts showing he paid the portion of utilities up to the day of his departure, as well as cable for the entire month.

I find the advertising invoice in respect to the alleged claim for costs to re-advertise the rental unit after September 10, 2008 is problematic in several ways. The tenant was given Notice to End and vacated accordingly by the effective date and does not owe any rent beyond September 2008. As the landlord is not claiming and cannot claim loss of revenue for future months – this claim for advertising is irrelevant. I therefore must dismiss this portion of the landlord's claim.

The landlord has not aptly supported his claim that the suite required cleaning and then also required "restoration" due to smoke residue in the suite. I prefer the tenant's testimony that he properly cleaned the suite. Each photograph submitted by the tenant appears to show the suite in a clean condition, other than possible normal wear and tear. I find that in response to the tenant's photographs, the same photographs were also submitted by the landlord, in which the landlord identifies some uncertain issues in the same photographs. If the landlord had issues which were not clear in the tenant's photographs, the landlord should have submitted his own photographs making his issues more obvious. I also prefer the tenant's testimony that he was mindful that smoking was not permitted in the suite, and he and guests smoked outdoors, accordingly. I therefore dismiss both portions of the landlord's claim in both of these regards.

The tenant and landlord agree the carpeting was not professionally cleaned when he vacated the suite, and the tenancy agreement confirms this as a term of the tenancy. I

find the landlord is entitled to recovery of the cost of professional carpet cleaning in the submitted amount of **\$80**.

In respect to the costs for lock replacement, I find that in the absence of supporting evidence from the landlord, and in contrast to the position of the tenant on this claim item I decline and dismiss the landlord's claim for lock replacement.

In respect to the landlord's assertions that the tenant allowed another individual to permanently reside in the rental unit; again, I find that in the absence of compelling supporting evidence from the landlord, and in contrast to the tenant's position on this claim item I decline and dismiss the landlord's claim for extra costs for dual occupancy of the rental unit.

As the landlord has been partially successful in his application, the landlord is also entitled to partial recovery of the filing fee in the proportionate amount of **\$10**, for a quantum entitlement claim of **\$463.33** In summary:

Unpaid rent and utilities for month of September 2008 (\$560 + \$130 + 15 (- \$245 which was paid) =	373.33
Newspaper advertisement costs for period of 09/02/08 to 09/30/08. (Note: Includes a previous balance carried over of \$61.11).	0
Restoring suite from cigarette and cigar smoke	0
General cleaning of rental unit	0
Professional cleaning of carpets	80.00
Replacing of lock keys nor returned	0
Total of extra rent and utilities for alleged dual occupancy for approx. 4 months	0
Filing fee for this application	11.00
<b>Total of landlord's entitlement</b>	<b>\$463.33</b>

## **Conclusion**

I grant the landlord an order under section 67 for the amount of **\$463.33**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated April 16, 2009