

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, for unpaid rent, for money owed or compensation for damage or loss under the Act, to keep the security and storage key deposit, and to recover the cost of the filing free from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, served personally to the Tenant by the Landlord in the presence of a witness at the Tenant's place of business on May 15, 2009 in the evening.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

The Tenant did not appear despite being served notice of today's hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The tenancy began as a fixed term tenancy on April 6, 2008, switched over to a month to month tenancy as of March 31, 2009, and ended April 28, 2009 when the Tenant

vacated the rental unit. Rent was payable on the first of each month in the amount of \$750.00 and the Tenant paid a security deposit of \$375.00 and a bike storage key deposit of \$35.00 on March 30, 2008.

The Landlord testified that the Tenant failed to pay April 2009 rent so a 10 Day Notice to End Tenancy issued to the tenant on April 15, 2009 with a move out date listed as April 28, 2009.

The Landlord provided evidence in support of her statement that the Tenant was given two times to attend the move-out inspection report and that he chose the 5:00 p.m. time. The Landlord advised that the Tenant failed to show up for the move out inspection so the report was completed in the Tenant's absence.

The Landlord provided picture evidence in support of her claim that the Tenant left the rental unit dirty, that he left articles in the fridge in cupboards and through the unit, and the Tenant left ferret feces throughout the rental unit.

The Landlord pointed out that the tenancy agreement stipulates that the rental unit is a non-smoking unit but there was evidence that the Tenant smoked in the unit and that there is a clause that states a \$25.00 NSF fee and a \$25.00 late payment fees can be charged.

The Landlord is claiming \$750.00 for April 2009 unpaid rent, \$25.00 NSF fee as the Tenant provided a cheque for April rent but that it was returned NSF, \$350.00 for cleaning, \$97.80 for cleaning the drapes, \$270.00 for carpet cleaning, \$500.00 for painting the rental unit, and \$200.00 for disposal fees, \$50.00 for the extra Tenant for April 2009, and a late payment charge of \$25.00 for April 2009.

The Landlord advised that she did not provide evidence that the Tenant had an extra Tenant in the rental unit for the month of April 2009.

The Landlord testified that she had a contractor attend the walk through inspection with her and that the contractor provided the Landlord with a quote to clean and repair the rental unit. The Landlord stated that she has an arrangement with the contractor not to charge her more than the original quote, even if it took longer to do the work.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Landlord, bears the burden of proof and the evidence furnished by the Applicant landlord must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the landlords right to claim damages from the Tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Unpaid Rent – Based on the testimony and evidence before me I find that the Landlord has proven the test for damage and loss and I approve the Landlord's claim for \$750.00 of unpaid rent for April 2009.

NSF and Late Payment Fees – Section 7(d) of the *Residential Tenancy Regulation* states that a landlord may charge a \$25.00 administration fee for returned cheques and for a late payment fee providing that the tenancy agreement provides for that fee. I find that the evidence proves that the tenancy agreement provides for the above mentioned fees and that the Landlord has proven the test for damage or loss. Based on the aforementioned I hereby approve the Landlord's claim for both the \$25.00 NSF fee and the \$25.00 late payment fee for April 2009.

Cleaning – The Landlord provided an "estimate" that it would take approximately 14 hours to clean the rental unit and testified that it actually took 21 hours to complete the work. Based on the testimony, documentary evidence, and picture evidence I find that the Landlord has proven her claim for damages and I approve the Landlord's claim in the amount of \$315.00 (21 hours x \$15.00).

Drapery Cleaning – The picture evidence supports the Landlord's testimony that the Tenant did not clean anything in the rental unit and that the Tenant left ferret feces on the floor and carpet. On a balance of probabilities I find that the Tenant would not have cleaned the drapes at the end of the tenancy. Based on the aforementioned I find that the Landlord has proven the test for damage and loss and I approve the Landlord's claim of \$97.80 for drapery cleaning.

Carpet Cleaning – The picture evidence supports the Landlord's testimony that the Tenant did not clean the carpets and that the Tenant left ferret feces on the carpet. Based on the aforementioned I find that the Landlord has proven the claim for damage and loss and I find that the Landlord is entitled to recover the cost of cleaning the carpets in the amount of \$270.00.

Painting – The Landlord has claimed \$500.00 to repaint the entire unit stating that the unit had to be repainted completely because the Tenant smoked in the rental unit when the tenancy agreement states that this was a non-smoking rental unit. The Landlord stated that there were several holes in the walls that had to be patched and painted over. I note that there is no documentary evidence to support the Landlord's claim that the Tenant smoked in the rental unit and that there are no pictures to support the Landlord's testimony that the walls were in need of repair and repainting. I also note that there is no evidence to prove that paint was purchased or how many hours a painter worked to repaint this unit. Based on the above I find that the Landlord has failed to prove the test for damage and loss for painting in the amount of \$500.00 and I dismiss the Landlord's claim without leave to reapply.

Extra Tenant Fee – The Landlord has claimed \$50.00 for an "extra tenant" fee as the Tenant had someone living with him for the month of April 2009. The Landlord testified that she did not provide evidence in support of this claim. I find that the Landlord has failed to prove her claim of \$50.00 for the extra tenant fee and I dismiss the Landlord's claim without leave to reapply.

Disposal Fee – The Landlord has claimed \$200.00 for a disposal fee to remove the Tenant's remaining articles and the ferret feces and transport them to the landfill. I note that there is no evidence to support that these articles were taken to a landfill instead of packaging them up and putting them in the normal waste removal. The Landlord claimed that this fee included the cost to pick up the feces but also testified that she had to have a more thorough cleaning of the carpet done and cleaning of the rental unit because of the feces. Based on the above I find that the carpet cleaning and cleaning of the rental unit would have included the cleaning up of the feces, and in the absence of proof that articles were actually taken to the landfill I find that the Landlord has failed to prove the test for damage and loss and I hereby dismiss her claim of the \$200.00 disposal fee without leave to reapply.

Filing Fee – I find that the Landlord has succeeded at large with her claim and that the Landlord is entitled to recover the \$50.00 filing fee from the Tenant for this application.

Monetary Order – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security and bike storage key deposits, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid rent for April 2009	\$750.00
NSF charge for April 2009 returned cheque	25.00
Late Payment fee for April 2009	25.00
Cleaning the rental unit	315.00
Drapery cleaning	97.80
Carpet cleaning	270.00
Filing fee	50.00
Sub total (Monetary Order in favor of the Landlord)	\$1,532.80
Less Security Deposit of \$375.00 plus Bike Key Deposit of \$35.00 plus interest from March 30, 2008 to August 6, 2009 of \$4.65	-414.65
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,118.15

Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$1,118.15. The order must be served on the respondent Tenant and is enforceable through the Provincial Court 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: August 06, 2009.

Dispute Resolution Officer