



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for damages to the rental unit, for unpaid rent, to retain all or part of the security deposit, compensation for damage or loss and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence and to make submissions during the hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damages to the rental unit in the sum of \$855.00?

Is the landlord entitled to compensation for loss of rent revenue for June 2009 in the sum of \$2,000.00?

May the Landlord retain all or part of the deposits paid?

Is the Landlord entitled to compensation for lost wages in the sum of \$315.00?

Is the Landlord entitled to filing fee costs?

Background and Evidence

This tenancy commenced August 1, 2008, rent of \$1,900.00 was due by the first day of each month. A security deposit and pet deposit of \$400.00 each were paid on August 12, 2008. The parties signed an addendum to the tenancy agreement which stated that no extra occupants, beyond the three indicated on the addendum, would be permitted.

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The Landlord submitted as evidence copies of letters sent to the Tenant; one dated January 24, 2009 and the second dated April 5, 2009. The first letter indicates a number of issues of concern to the Landlord such as an extra person who is living in the rental unit. The letter informed the Tenant that due to this extra occupant the rent would increase by \$100.00 per month effective February 1, 2009. This letter also informs the Tenant that if she has difficulty complying with the requests of the landlord she must consider the letter as two month's notice to end the tenancy.

The April 5, 2009 letter informed the Tenant that the Landlord would like the Tenant to commence looking for a new rental unit, that the tenancy has presented a number of problems and indicates that the Tenant must "be out by July 1st." The letter further stated that if the landlord did not "hear differently from you I will begin advertising the unit for rent for the first of July, I will give you 24 hours notice for potential(sic) tenants viewing."

The Landlord testified that on May 28, 2009 she attended at the rental unit and found the Tenant moving out of the rental unit. The landlord stated that the Tenant did not provide her with proper written notice to move. The Tenant testified that the Landlord had given her notice and that she acted on this notice. The Tenant testified that she now understands the notice was insufficient.

The Landlord testified that on May 29, 2009 she posted a notice scheduling a move-out condition inspection on May 31 at 1:30 p.m. The parties agree that subsequently they spoke on the phone to confirm this time, but the Tenant stated she felt intimidated by the Landlord and offered to have two people attend at the rental unit on June 2 in order to complete the remaining cleaning. The Landlord denied this offer made by the Tenant and stated that the tenant could have access to the rental unit until noon on June 1, 2009. A move-out condition inspection report was completed without the Tenant present.

The Landlord provided a copy of a June 1, 2009 10 Day Notice to End Tenancy for Unpaid Rent of \$2,000.00 due on June 1, 2009 and testified that this notice was posted to the door of the rental unit. The Landlord stated that when she saw the Tenant on May 28 the Tenant would not confirm that she was moving out, although the tenant had a moving van present and the rental unit was emptied of most of the tenant's belongings.

On June 4 the Tenant gave the Landlord a letter in which the Tenant indicates she did not provide notice to end the tenancy as the landlord had already given her written notice. The Tenant also asked that anything remaining in the house be put in the garbage. The Tenant's letter outlined the cleaning she had completed, confirming that

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the oven did require cleaning and mentions the damage to a corner of the wall in the bedroom. The Tenant's letter offers the Landlord her \$400.00 security deposit for any costs for cleaning and disposal and indicates that the Tenant will arrange to have her pet deposit returned.

The Landlord provided a receipt for services provided as follows:

garbage removal/storage	85.00
repairs to the property	100.00
cleaning/repair materials	75.00
re-key lock – labour	105.00
labour \$25.00/hour X 16 hours	400.00
fuel charge	45.00
Total	855.00

The parties agree that the rental unit required additional cleaning and that there was some damage to the corner of a wall in the bedroom. The Landlord testified that she paid for both garbage disposal and return of the Tenants belongings to the Tenant's new residence. The Tenant testified that the Landlord had not only the few belongings she left returned to her but multiple bags of garbage were also delivered and left in the common area of her new place of residence. The Landlord did not deny that garbage may have been delivered to the Tenant and stated that she did not check each bag to determine if it contained belongings or garbage.

The Landlord testified that the Tenant did not return the keys and that new locks were purchased and installed. The Landlord has claimed compensation for labour for cleaning, painting and repairs. The Landlord provided photographs showing nail holes which the Tenant stated were from shelving that she had removed and left in a closet.

The Landlord stated that on May 28, 2009 she had just returned from having dental surgery and that when she discovered the Tenant moving she was forced to speak with the Tenant. The Landlord stated that she was not to be speaking and that due to the necessity of having to communicate with the Tenant the Landlord suffered post-operative bleeding which required that she take two days off of work. The Landlord is claiming \$315.00 in compensation for loss of wages.

Analysis

In order for a notice to end tenancy to be effective section 52 of the Act requires a Landlord to provide written notice that is signed, dated, gives the address of the rental unit, the effective date of the notice and be in the approved form. The Landlord failed to

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provide the Tenant with proper notice and on two occasions served the Tenant with an improper notice to end tenancy.

I have determined that on May 28, 2009 the Landlord was fully aware that the Tenant was moving out of the rental unit and that the presence of a moving van provided ample evidence that a move was occurring. The Landlord is seeking a remedy under the Act, for compensation as the result of the Tenant vacating due to a notice to end tenancy that was invalid. The Tenant could have sought a remedy under the Act if she had felt that the notice given by the Landlord was invalid. However; I have accepted that the Tenant was simply following the written direction of the Landlord given in the April 5, 2009 letter to the Tenant and dismiss without leave to reapply the Landlord's claim for June rental loss compensation. I note that after the Tenant had moved the landlord issued a June 1, 2009 notice to end tenancy for unpaid rent which is also invalid as it was issued on the date upon which rent is due.

The Tenant's letter to the Landlord dated June 4, 2009 asked that the Landlord retain \$400.00 of the deposit paid to cover any cleaning costs and garbage removal. I have considered the landlord's claim for compensation for garbage removal and return of the Tenant's property and have determined that the Tenant's testimony is more reliable. The Landlord could not confirm if she paid to have garbage returned to the Tenant or if, in fact it was properly disposed.

I have determined that compensation claimed for removal of garbage and the Tenant's belongings is without merit. The Tenant had provided the Landlord with written permission to dispose of all items left at the rental unit and the decision of the Landlord to incur costs to deliver garbage and items that the Tenant had requested be disposed of, is unreasonable. The Landlord's testimony that she did not discern garbage from belongings leads me to find that it is more than likely that garbage was delivered to the Tenant and that the cost of this delivery of garbage is being claimed by the Landlord. Therefore; I dismiss without leave to reapply the claim for compensation related to garbage removal, fuel costs and return of the Tenant's belongings.

A Tenant must pay for repair for any excessive number of nail holes or any deliberate or negligent damage to the walls. I do not find that the nail holes from the removed shelves are excessive and that they would not pose a problem once the shelves were placed back on the walls. I have no evidence before me that the damage to the corner of the wall in the bedroom occurred through a deliberate or negligent act of the Tenant. Therefore; any claim related to repair of the walls is dismissed without leave to reapply.

The Tenant did not return the keys to the Landlord and I find that the Landlord is entitled to the cost of lock replacement in the sum of \$105.00.

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I find that the Landlord is entitled to reasonable cleaning costs in the sum of \$200.00. I have determined that the written offer of the Tenant requesting the landlord retain the \$400.00 deposit for cleaning, disposal of any belongings and garbage is void, given the Landlord's decision to incur additional costs by delivering garbage and other items to the Tenant's home rather than disposing of all items as offered by the Tenant.

I find that the Landlord's claim for compensation for loss of wages is without merit. The Landlord has provided no evidence that she suffered a loss, that damage existed and was caused by any action or neglect of the Tenant and provided no verification of the amount claimed. I find that the Landlord should not have been surprised to find the Tenant moving as the Tenant had been given notice to do so by the Landlord. If the Landlord chose to speak and aggravate her condition I find that this was caused solely by the Landlord. Therefore, I find that the Landlord's claim for loss of wages is dismissed without leave to reapply.

I note that effective February 1, 2009 the Tenant commenced payment of a \$100.00 per month rent increase due to the presence of an additional occupant. There is no evidence before me of any term in the tenancy agreement which allows for an increase in rent for additional occupants.

As the landlord's claim has partial merit I find that the Landlord is entitled to a portion of the filing fee cost in the sum of \$5.00.

I find that the Landlord is entitled to retain the Tenant's security deposit plus interest, in the amount of **\$310.00** in satisfaction of the monetary claim.

The landlord is holding deposits plus interest in the sum of \$804.66.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$305.00, which is comprised of cleaning, key replacement costs and \$5.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Landlord will be retaining the Tenant's security deposit plus interest, in the amount of **\$305.00**, in satisfaction of the monetary claim.

The Landlord continues to hold in trust \$499.66 deposits paid, plus interest. As the Landlord's claim against the Tenant's deposit has been determined I Order that the Landlord forthwith return the balance of the deposit and interest to the Tenant via mail, to the Tenant's address included on the Landlord's application for dispute resolution. In the event that the Landlord does not comply I have issued a monetary Order to the



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Tenant, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of the Landlord's claim for compensation and damages is dismissed without leave to reapply.

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 27, 2009.

Dispute Resolution Officer