



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing dealt with the landlords' request for unpaid rent, damage to the rental unit, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the other party's submissions.

Issues(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent and utilities?
2. Has the landlord established an entitlement to damage to the rental unit?
3. Retention of the security deposit.
4. Award of the filing fee.

Background and Evidence

Based upon the evidence before me, I make the following findings. The tenancy commenced in August 2005 and at the end of the tenancy the tenant was required to pay rent of \$539.25 and \$70.00 for utilities to the landlord on the 1st day of the month. A \$250.00 security deposit had been paid at the commencement of the tenancy. The landlord issued a *10 Day Notice to End Tenancy for Unpaid Rent* on June 2, 2009 with an effective date of June 12, 2009 and the tenant vacated the rental unit on June 10, 2009.

The landlord testified that the tenant did not pay rent for June 2009 and the landlords are seeking pro-rated rent and utilities equivalent to 10 days for the month of June 2009 in the amount of \$202.58. The landlord is seeking to retain the tenant's security deposit for cleaning the rental unit, carpet cleaning, damaged flooring, rot repair, repainting and garbage removal. The landlord did not provide receipts for the cleaning and repairs but provided verbal testimony that approximately \$500.00 has been spent on paint, \$40.00 for garbage removal and 4 days of the landlord's time spent cleaning. The landlord acknowledged that attempts to repair the shower were made numerous times during the tenancy but the landlord attributed the rot in the bathroom floor to the tenant's son leaning on the wall.

The tenant provided testimony that a cheque for June 2009 rent was sent to the landlord by income assistance and the tenant acknowledged not paying any amount for

utilities for June 2009. As evidence of rent payment, the tenant provided a payment history printout from income assistance showing payment to the landlord in the amount of \$520.00 and a date of June 2009 that was obviously altered. The landlord also pointed out that the payment amount indicated on the payment history was for \$520.00 which was the amount of rent the tenant was paying in the previous year.

With respect to the condition of the rental unit, the tenant acknowledged cleaning was required but claimed she sent a text message to the male landlord on June 10, 2009 requesting permission to return to the rental unit on June 14, 2009 to clean but that the tenant's request went unanswered. The tenant also acknowledged that some garbage was left behind in the rental unit. With respect to the flooring, the tenant submitted that the flooring was not in good condition at the beginning of the tenancy.

Both parties provided copies of a move-in inspection report but the documents were not exact duplicates. However, the move-in inspection reports were consistent in that the flooring in the kitchen and living room were shown to be worn and stained at the commencement of the tenancy. The move-out inspection was performed by the landlord only. The tenant did not notify the landlord that the tenant was vacating on June 10, 2009; however, the landlord saw the tenant moving out on June 10, 2009 but did not approach the tenant about conducting a move-out inspection.

The landlord provided photographs taken at the end of the tenancy as evidence for the hearing.

Analysis

Where payment of rent is in dispute, the burden to prove payment of rent is upon the tenant. Although the tenant alleged rent had been paid for June 2009, the tenant did not dispute the 10 Day Notice for unpaid rent served upon her and the tenant vacated the rental unit June 10, 2009. The documentation provided by the tenant was obviously altered and the amount of payment indicated on the document was for a lesser amount of rent. In light of the above, I found the tenant's actions and documentary evidence did not support her testimony that rent was paid for June 2009 and I find the landlords have satisfied me that they did not receive rent for the month of June 2009. As the tenant acknowledged not paying utilities for June 2009 the landlords have satisfied me they are entitled to receive utilities for the month of June 2009. Therefore, I grant the landlord's request for monetary compensation of \$202.58 for 10 days of rent and utilities for the month June 2009.

The tenant is required to leave a rental unit reasonably clean and undamaged, except for normal wear and tear, at the end of the tenancy. A landlord is not obligated to permit a tenant access to a rental unit after a tenancy ends.

A landlord must provide the tenant with two opportunities to participate in a move-out inspection. Written communication may be used to propose two opportunities for inspection. I am satisfied the landlord did not give the tenant those two opportunities. Where a landlord does not fulfill the requirement to propose two opportunities for inspection to the tenant, the landlord loses the right to gain the tenant's consent to deduct amount from the security deposit for damages; however, the landlord may make an Application for Dispute Resolution to seek compensation for damages. I find the landlord is entitled to make a claim for damages against the tenant via the dispute resolution process even though I found the landlord did not offer the tenant two opportunities for a move-out inspection. Accordingly, I have placed little weight on the move-out inspection report and I have placed more weight on the parties' testimony and the photographs in determining the condition of the rental unit at the end of the tenancy.

Based on the undisputed testimony of the parties, I am satisfied that the tenant did not leave the rental unit reasonably clean at the end of the tenancy and the landlord had to spent numerous hours to clean the rental unit. I award the landlord \$200.00 as compensation for the time spent cleaning the rental unit and disposing of the tenant's garbage.

The move-in inspection reports provided by both parties show the flooring was worn and stained in the kitchen and living room; therefore, I find the landlord did not satisfy me that the tenant is responsible for causing damage to the kitchen flooring and the living room flooring. As I heard there had been repeated issues with leaks in the bathroom, I was not satisfied that the rot was the result of actions of the tenant or the tenant's son. I do not award painting costs to the landlord as the landlord was uncertain as to the age of the existing paint. Interior paint has an ordinary life of approximately 4 years due to normal wear and tear and ordinary aging and I find it likely the rental unit was in need of repainting.

Generally, a tenant is responsible for cleaning the carpet after a tenancy of more than one year and the tenant is responsible for dump fees for garbage left behind by the tenant. However, the party making a monetary claim has the responsibility to prove the amount spent to clean and rectify damage. Although the landlord filed this application before the costs were incurred, the landlord could have amended the application and provided the receipts as evidence up to five business days before the hearing, yet the landlord did not provide such evidence. Since the landlord did not provide receipts to

substantiate the carpet cleaning costs and dump fees I do not award these costs to the landlords.

In summary, the landlord's claim for unpaid rent and utilities of \$202.58 is granted and \$200.00 is awarded to the landlord for time spent cleaning and disposing of the tenant's garbage. The remainder of the landlords' claims for damages are denied as the landlord did not provide sufficient evidence to prove the quantum of the claim or that damage was the result of the tenant's actions or neglect. I award the filing fee paid for this application to the landlord.

The landlord is authorized to retain the tenant's security deposit and accrued interest of \$258.85 in partial satisfaction of the amount owed the landlord and I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent and utilities	\$ 202.58
Cleaning and garbage removal	200.00
Filing fee	<u>50.00</u>
Sub-total	\$ 452.58
Less: security deposit and interest	<u>(258.85)</u>
Monetary Order for landlords	<u>\$ 193.73</u>

The landlords must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlords are authorized to retain the tenant's security deposit and interest in partial satisfaction of the amounts owed the landlords. The landlords are also provided a Monetary Order for the balance owing of \$193.73 to serve upon the tenant.

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: September 29, 2009.

Dispute Resolution Officer