

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNDC, MND, MNSD, MNR, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, the costs of repairs and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of this claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim for loss of income, costs incurred to repair the rental unit and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on December 01, 2007 for a fixed term ending April 30, 2008. At the end of the term, the tenant entered into a new tenancy agreement for a fixed term ending April 30, 2009. The tenant paid a security deposit of \$525.00. The rent at the end of the tenancy was \$1140.00 due in advance on the first day of each month. The tenant moved out on April 30, 2009.

At the start of the first tenancy, the tenant was given two opportunities to conduct a move in inspection. The second letter stated that if the tenant was unable to participate in the inspection, it would then be understood that the tenant agreed that the suite was in good condition. The tenant did not respond to the landlord's request for an inspection and therefore this inspection was not completed. A move in inspection was also not completed at the start of the new tenancy.

On April 16, 2009, the tenant placed his bed bug infested futon frame inside a dumpster located at the back of the building. The landlord sent the tenant a letter informing him of his responsibility to advise the landlord of a pest problem and to inform him of the arrangements that were made to have the rental unit sprayed for bed bugs.

The letter also stated that this problem caused difficulties for the landlord to show the suite to prospective tenants. The tenant admitted to having discarded the bug ridden frame inside the dumpster.

The tenant was advised of his move-out responsibilities in writing and was offered two opportunities to conduct a move out inspection. The tenant was unable to participate and the inspection was conducted in the presence of his room mate. Several deficiencies were noted, but the room mate refused to sign in acknowledgement. The tenant visited the complex later the same day but did not enter the suite to conduct an inspection. The tenant also refused to sign the move out inspection report.

The tenant agreed to not having professionally cleaned the drapes or carpets as per the move out responsibilities check list. The tenant stated that he had cleaned the unit and disputed the landlord's claim for cleaning costs.

The landlord stated that the walls were in poor condition and needed to be repaired and painted. The landlord is claiming 20% of the painting costs. In addition, due to the painting, cleaning and spraying for bugs that was done in May, the unit was not rentable for the month of May. The landlord is claiming loss of income for this period.

The landlord has filed an invoice for the following costs:

1.	Cleaning	\$200.00
2.	Painting	\$1,200.00
3.	Pest Control April 21, 2009	\$78.75
4.	Pest Control April 29, 2009	\$42.00
5.	Carpet Cleaning	\$115.50
6.	Removal of Bed	\$250.00
7.	Loss of income for May 2009	\$1,140.00
8.	Cleaning of Drapes	\$140.00
21.	Filing fee	\$50.00
	Total	\$3,216.25

Analysis

The tenant entered into a new tenancy agreement on April 30, 2008. A move in inspection was not conducted at that time. Pursuant to section 24 of the *Residential Tenancy Act*, the right of a landlord to claim against a security deposit is extinguished if the landlord did not complete a condition inspection report. Accordingly, the landlord has lost the right to claim against the security deposit and must return it in full to the tenant, along with the accrued interest.

However, section 9 of the *Residential Tenancy Policy Guideline #17* states that a landlord who has lost the right to claim against the security deposit for damage to the rental unit retains the right to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit and to deduct from the deposit, the amount of an arbitrator's order.

Based on the sworn testimony of both parties, I find that the tenant agreed to cover the costs incurred by the landlord for carpet cleaning (\$115.50), removal of bug ridden bed (\$250.00) and cleaning of drapes (\$140.00). I also find it appropriate to award the landlord \$100.00 towards her claim of \$200.00 for general cleaning.

The landlord did not provide evidence to support her claim of \$1,140.00 for loss of income for the month of May and therefore this portion of her claim is dismissed. I also find that since the landlord did not file photographs to show the condition of the walls or information regarding when the walls were previously painted, the landlord's claim for \$1,200.00 for painting is dismissed. Pursuant to section 32 of the *Residential Tenancy Act*, a landlord must maintain the rental unit in compliance with the health and safety standards required by law and therefore, I find that the landlord must bear the cost of ridding the unit of bed bugs.

Overall, the landlord has established a claim of \$605.50. The landlord has proven a portion of her case and is therefore also entitled to the recovery of the filing fee for a total claim of \$655.50.

The landlord owes the tenant the security deposit of \$525.00 plus the accrued interest of \$8.56. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$121.94 which consists of the landlord's claim (\$655.50) minus the security deposit plus accrued interest (533.56).

Conclusion

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$121.94**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated September 16, 2009.

Dispute Resolution Officer