

## **DECISION AND REASONS**

**Dispute Codes:** *MNDC, MNSD, FF.*

### **Introduction.**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for the loss of income, cleaning costs, liquidated damages and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. The tenant applied for the return of her security and key deposits, compensation for the loss of use of her bedroom for one month and the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to a monetary order for loss of income, liquidated damages, cleaning costs and the filing fee? Is the tenant entitled to compensation, the return of her security and key deposits and the filing fee?

### **Background and Evidence**

The tenancy started on June 01, 2009 for a fixed term of one year. The rental unit is located in a building that houses 35 units. The rent was \$860.00, due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$430.00. A move in inspection was conducted and some deficiencies were noted on the inspection report.

A clause in the tenancy agreement states that the tenant may end a fixed term tenancy by notifying the landlord before the first of the month and by paying an administrative re-rental fee of \$500.00. The landlord also pointed out to another clause in the tenancy agreement that requires the tenant to have the carpets professionally cleaned, prior to moving out.

The tenant stated that she moved in on May 21, 2009 and shortly after, she noticed the presence of carpenter ants in the rental unit. The tenant wrote a note of complaint to the landlord on June 10, 2009. On June 16, 2009, a maintenance staff member visited the unit and gave the tenant a sticky trap to help resolve the problem.

The tenant stated that on July 01 she woke up to find two ants on her person. She left a message for the landlord. Again on July 03, the tenant found ants on herself and left the landlord a message. Later that day, the maintenance staff member came by and gave the tenant three products to use. The tenant contacted a commercial pest control company and based on their advice to her, she chose not to use the products that were supplied to her by the landlord.

On July 06, the landlord sent the maintenance staff member and the pest control personnel to check the rental unit. The landlord stated that the pest control company is hired by the landlord to treat the complex on an ongoing basis. Based on the tenant's complaints, it was decided to treat the apartment for ants and the tenant was advised that the apartment would have to be vacant for four hours after treatment.

The tenant stated that she spoke with other pest control companies and it was recommended to her to leave the apartment vacant for 12 to 48 hours. The landlord requested the tenant to provide him with a date that was convenient for her to have the treatment done. The tenant chose not to have the unit treated and did not get back to the landlord with a date.

On July 15, 2009 the tenant gave the landlord notice to end the tenancy and moved out on July 31, 2009. A move out inspection was conducted and apart from the deficiencies at the time of the move in inspection, it was noted that the carpet, drapes and the area under the appliances were not clean. The tenant agreed that they vacuumed the carpets and did not have them professionally cleaned.

The landlord advertised the availability of the rental unit and was able to find a tenant for September 01, 2009, thereby incurring a loss of income for the month of August. The landlord has also applied for liquidated damages.

### **Landlord's Application**

The landlord is claiming the following:

1.	Loss of income for August 2009	\$860.00
2.	Cost of cleaning	\$160.00
3.	Administrative fee for cancellation of a fixed term tenancy	\$500.00

4.	Filing fee	\$50.00
	Total	<b>\$1570.00</b>

The landlord has filed copies of the tenancy agreement, move in and move out inspection report and email correspondence with the tenant.

### **Tenant's Application**

The tenant is claiming the following:

1.	Damage Deposit	\$430.00
2.	Key Deposit	\$50.00
3.	Compensation for loss of use of bedroom for one month	\$400.00
	Total	<b>\$880.00</b>

The tenant has filed photographs to show the presence of ants, the condition of the unit at the time she moved out and copies of all the email correspondence between the two parties.

### **Analysis**

#### **Landlord's application:**

Based on the sworn verbal testimony and documentary evidence filed by the landlord, I accept the landlord's evidence in respect of the claim. I find that the tenant ended a fixed term tenancy prior to the end date. In addition, pursuant to section 45 of the *Residential Tenancy Act*, the tenant did not give the landlord adequate notice to end the tenancy thereby resulting in a loss of income to the landlord.

The landlord mitigated his losses by advertising the unit but was not able to find a tenant for August. Therefore, I find that the landlord is entitled to \$860.00 for August.

Regarding the administrative cost of re-renting the unit, I find that the tenancy agreement contains a clause whereby the parties agreed in advance, on the amount of damages payable in the event of a breach of the tenancy agreement. By signing the tenancy agreement, the tenant agreed to pay the administrative cost of \$500.00 to re-rent the unit, if she ended the tenancy prior to the end date of the fixed term. Therefore I find that the landlord is entitled to \$500.00 as per the tenancy agreement.

Based on the move in and move out inspection reports and a clause in the tenancy agreement, I find that the tenant is liable for the cost of cleaning the carpets, drapes and the area under the appliances. Therefore the landlord has established a claim for \$160.00 for cleaning.

Since the landlord has proven his case, he is entitled to the cost of filing his application.

### **Tenant's application:**

The tenant has applied for compensation for the loss of use of the bedroom due to the presence of ants. Based on the documentary evidence and sworn testimony of both parties, I find that the landlord acted diligently by responding to the tenant's complaints in a timely manner and by providing services to resolve the problem. The tenant chose not to avail herself of the treatment for pest control, offered by the landlord.

As per the definition, an infestation occurs when insects "*overrun a place or site in large numbers and become threatening, harmful, or unpleasant*" The tenant's evidence consists of photographs, all of which show a single ant in each photograph which is not in keeping with the definition of an infestation. During the summer, it is more likely than not, that ants will enter through doors that are kept open. Temporary discomfort or inconvenience does not constitute a basis for compensation. Accordingly, I find that the tenant has not proven her case for compensation and her application for \$400.00 is dismissed.

Since the tenant has not proven her case, she is also not entitled to the recovery of the filing fee.

### **Conclusion**

Overall the landlord has established a claim for \$1,570.00.

I order that the landlord retain the security deposit of \$430.00 and key deposit of \$50.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$1090.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety.

Dated November 30, 2009.

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Dispute Resolution Officer