

DECISION AND REASONS

Dispute Codes:

OPR, MNR, MNSD, MNDC, RR, LRE, FF

Introduction.

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

The landlord made two applications. The first one was for a monetary order for rent and the second one was for an order of possession, to retain the security deposit and for the filing fee. The tenant applied for an order to suspend the landlord's right to enter the rental unit and to allow the tenant to reduce rent for repairs. The tenant also applied for a monetary order for emergency repairs done by him, for compensation for loss under the *Act* and for the filing fee.

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

The tenant stated that he moved out on October 14, 2009 and therefore the landlord withdrew his application for an order of possession. Since the tenancy has ended, the tenant withdrew his application for reduced rent and to suspend the landlord's right to enter the rental unit. Therefore, this hearing only dealt with the landlord's monetary claim for unpaid rent and the filing fee and to retain the security deposit. This hearing also dealt with the tenant's application for compensation for loss under the *Act*, for the cost of emergency repairs, for the return of his security deposit and for the filing fee.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent and the filing fee? Is the tenant entitled to compensation?

Background and Evidence

The tenancy started on September 01, 2009 for a fixed term of one year. Rent was \$3,500.00 due on the first day of each month. Pursuant to the tenancy agreement, the rent did not include the cost of metered water, electricity and heat. Prior to moving in

the tenant paid a security deposit of \$1,750.00.

Landlord's Application:

The landlord stated that on September 17, 2009, he hired a contractor to fix a window in the rental unit. The landlord gave the tenant proper notice, prior to the repair. The contractor wrote the landlord a note stating that "*dirt on the carpet is from TG's dogs, not from myself or my crew*". The landlord contacted the tenant to request a pet damage deposit. The tenant stated that he did not have dogs and refused to pay.

The tenant's rent cheque for September was returned for insufficient funds. On October 05, the landlord served the tenant with a ten day notice to end tenancy for rent for September and for the pet damage deposit. The landlord stated that the tenant paid \$1,500.00 in cash and still owes \$2,000.00 for September.

On November 22, 2009, the landlord visited the rental unit and found that it was vacant. The landlord also found the unit in a messy condition with a tap left open in the basement, causing a flood. The landlord stated that he is currently in the process of cleaning up the unit and due to the severity of the damage; this process will take two to three weeks to fix. The landlord stated that he has taken photographs of the damage but was unable to provide this evidence in time for this hearing.

The landlord also filed a copy of the rent cheque for November that payment was stopped on. The landlord stated that he received rent in full for October and is claiming \$2,000.00 for September, \$3,500.00 for November and \$50.00 for the filing fee.

The landlord is also claiming for unpaid utilities and water and has filed evidence to support his claim. The tenant owes \$698.67 for utilities and \$215.71 for metered water.

Tenant's Application:

The tenant stated that during the tenancy, the landlord entered the rental unit on three occasions, without giving the tenant any notice. The tenant could not recall the dates but agreed that the landlord did give him adequate notice of the window repair.

The tenant stated that the pilot lights of the water heater and the furnace were not lit

and that he informed the landlord several times. When the landlord did not respond, the tenant hired a plumber who visited the unit three times and billed the tenant \$300.00. The tenant could not recall the dates of the services and did not file any evidence to support his monetary claim of \$300.00 for repairs.

The tenant stated that he did not have dogs in the rental unit and did not leave a tap open when he moved out.

The tenant stated that sometime in the first week of October he found some mould on the wall and took pictures. The tenant filed two pictures that show black spots on a wall. The tenant stated that he left up to 20 messages for the landlord and when he did not respond, the tenant moved out on October 14, 2009. The tenant stated that in the interest of his health and safety he could not continue to live in the rental unit and therefore left without informing the landlord. The tenant agreed that as of the date of the hearing he had not returned the keys to the landlord.

The tenant agreed that he owed the landlord the cost of the utilities and water. The tenant is applying for the return of his security deposit in the amount of \$1,500.00. However, the tenant has paid \$1,750.00 towards the security deposit. The tenant is also applying for \$300.00 that he states he paid for repairs and \$50.00 for the filing fee.

Analysis

Based on the sworn testimony of both parties, I find that the tenant owes rent for September in the amount of \$2,000.00. The tenant stated that he moved out on October 14, but did not inform the landlord nor did he return the keys to the landlord as of the day of the hearing (November 25, 2009). Therefore I find that the tenant also owes the landlord rent for November in the amount of \$3,500.00.

The landlord stated that upon finding the rental unit vacant, he also found considerable damage and the unit will not be in a condition to be rented until the repairs are done. The landlord may apply for damages including loss of income for December.

The tenant agreed that he owes the landlord utilities in the amount of \$698.67 and for water in the amount of \$215.71.

I find that the tenant did not provide sufficient evidence or reason to be awarded his claim for emergency repairs in the amount of \$300.00.

The landlord has proven his case and is entitled to recover the filing fee of \$50.00. The landlord filed a second application which was not necessary. Therefore the landlord must bear the cost of filing the second application.

Overall the landlord has established a claim for 5,500 in unpaid rent, \$914.38 in utilities and \$50.00 for the filing fee. I order that the landlord retain the security deposit of 1,750.00 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 \$5,628.76. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$5,628.76**. The tenant's application is dismissed in its entirety.

Dated November 25, 2009.

Dispute Resolution Officer