



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain, a Monetary Order for unpaid rent and damage to the rental unit, site or property, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail to each tenant on November 03, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on November 08 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Has the landlord established a monetary claim due to the loss of rent and damage to the rental unit?
- Are the landlords entitled to keep all or part of the security deposit?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?



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Background and Evidence

This month to month tenancy started on February 01, 2009 and ended on September 30, 2009. Rent for this property was \$1,100.00 per month due on the 1st of each month. The tenants paid a security deposit of \$550.00 on February 01, 2009.

The landlord testifies that the tenants did not pay rent for September, 2009. The tenants gave the landlord a cheque for the September rent however there were insufficient funds available and the cheque was returned on September 04. The tenants informed the landlord that they could not pay the rent and they would move out at the end of the month.

After the tenants had vacated the rental property the landlord found that they had not cleaned the house or yard and these areas had been left in a dirty state with some damages. The landlord claims the tenants did not clean the carpets. These were heavily soiled and the landlord paid \$250.00 to have them cleaned. The tenants removed an area rung which was new at the start of the tenancy at a cost of \$92.41. The tenant removed the two crisper drawers in the fridge and did not return them. These have been replaced at a cost of \$111.57. The landlord had to make repairs to the weather strip around the door at a cost of 29.39. The tenants left a substantial amount of garbage in the home and yard which the landlords had to sort out and remove to the landlord fill. This took three trips at a total cost of 33.75. The tenants had caused some damage to the walls and the landlord purchased supplies to make these repairs at a cost of \$21.47. The landlords also purchased sandpaper for the repairs to the wall and replacement light bulbs at a cost of \$11.97. The landlords found the tenants had used the attic storage space and had removed chunks of the installation which had to be replaced at a cost of \$99.46. The landlord had to purchase cleaning supplies at a cost of \$24.82. The landlord also had to employ the services of a cleaning lady to assist in the house clean. She worked for four hours at a cost of \$20.00 per hour to an amount of \$80.00. The landlord and her husband cleaned the rest of the house and yard. This took 35 hours due to the garbage, and damage caused by the tenants at a total cost of \$700.00.

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The landlord also claims the dishwasher in the house is no longer working but they have not repaired this yet. There was also damage caused to an interior door which has not been repaired at this time and no estimates or receipts are available for these items.

Analysis

I have carefully considered all the evidence before me. In the absence of any evidence from the tenant's despite opportunity to attend this hearing and present their evidence I have applied a test used for damage or loss claims:

TEST FOR DAMAGE AND LOSS CLAIMS

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlord has provided sufficient evidence to support her claim for damage to the rental unit, site or property and she is able to meet all of the components of the above test.

Therefore, I find that the landlords' application for damage and cleaning is upheld and find she is entitled to a Monetary Order to the amount of \$1,454.84 pursuant to s.67 of the Act.

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I also find the tenants did not pay rent for September on the day it was due and therefore find the landlord is entitled to recover the amount of \$1,100.00 from the tenants pursuant to s.67 of the *Act*.

I find the landlord is entitled to keep the tenants security deposit in partial payment of the outstanding rent pursuant to s. 38(4)(b) of the *Act*. As the landlord has been successful with her claim I find she is also entitled to recover her \$50.00 filing fee paid for this application pursuant to s.72(1) of the *Act*. A Monetary Order has been issued for the following amount:

Total amount for damages and cleaning	\$1,454.84
Filing fee	\$50.00
Less security deposit	(-\$550.00)
Total amount due to the landlord	\$2,054.84

As the landlord has not yet made repairs to the dishwasher or interior door she is at liberty to reapply for these items.

Conclusion

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$2,054.84**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: January 26, 2010.

Dispute Resolution Officer