



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

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

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on October 08, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on October 13, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*. The hearing was rescheduled and the tenant was sent a notice of the new hearing date and time.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has the landlord established a monetary claim due to the loss of rent and damage to the rental unit?
- Is the landlord entitled to keep all or part of the security deposit?



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

Background and Evidence

Both parties agree that this tenancy started on May 01, 2009 and ended when the tenant vacated the rental unit on October 01, 2009. Rent for this unit was \$1,250.00 per month which was due on the first of each month. The tenant paid a security deposit of \$600.00 on April 21, 2009. A move in condition inspection was completed at the start of the tenancy. No move out condition inspection was carried out.

The landlord claims this is a fixed term tenancy with an expiry date of April 30, 2010 while the tenant claims that the landlord gave her a new tenancy agreement in September after her co-tenant moved out and the agreement was amended to a month to month tenancy.

The landlord testifies that the tenant did not pay rent for September, 2009 of \$1,250.00. The landlord did not issue the tenant with a 10 Day Notice to End Tenancy for unpaid rent as the tenant said she would move out at the end of September, 2009. The tenant did not leave the rental unit until October 01, 2009. The landlord testifies that he was able to re-rent the unit on October 03, 2009. The landlord requests a Monetary Order for the outstanding rent for September, 2009 and a loss of revenue for two days in October, 2009 of \$80.00.

The tenant does not dispute that she owes rent to the landlord and testifies that after her co-tenant moved out she was unable to pay the rent. She reached an agreement with the landlord to pay \$600.00 on September, 01 and \$600.00 on September 15. The tenant testifies that these payments were not made as she experienced financial hardship.

The landlord testifies that after the tenant vacated the rental unit she did not clean the unit and the landlord and one other person spent a total of 24 hours cleaning and making minor repairs to the unit. The landlord is claiming \$20.00 per hour for the 24 hours to a sum of \$480.00. The landlord cleaned the walls and floors, vacuuming and shampooing rugs in two bedrooms and hall, cleaning the fridge and stove, cleaning up and disposing of 12 bags of garbage. The landlord claims \$45.00 for the carpet cleaner and mileage costs for two trips from his home to the rental unit to carry out this work to a total of 40km at \$0.50/km total of \$20.00.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

The tenant argues that when she moved into the rental unit the hall carpet was already stained and some of the garbage was left from a previous tenant. She disputes that she should have to pay the landlord to clean the rental unit as he could have just kept her security deposit.

The tenant gave the landlord her new forwarding address during the hearing.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Sections 23 and 35 of the Act say that a Landlord must complete a condition inspection report at the beginning of a tenancy and at the end of a tenancy in accordance with the Regulations and provide a copy of it to the Tenant (within 7 to 15 days). A condition inspection report is intended to serve as some objective evidence of whether the Tenant is responsible for damages to the rental unit during the tenancy or if she has left a rental unit unclean at the end of the tenancy.

The purpose of having both parties participate in a move in and move out condition inspection report is to provide evidence of the condition of the rental unit at the beginning and end of the tenancy so that the Parties can determine what damages were caused during the tenancy. In the absence of a condition inspection report, other evidence may be adduced but is not likely to carry the same evidentiary weight especially if it is disputed.

In this instance the tenant has disputed some aspects of the landlords claim. The tenant disputes that the stains on the hall carpet were caused by her during her tenancy, the tenant also disputes that all the garbage left at the rental property belonged to her. In this matter, the landlord has the burden of proof and must show that these stains were caused during the tenancy and all the garbage was left by the tenant and not previous tenants. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. I find that the landlord has not provided the move in condition inspection report in his evidence and no move out inspection report was completed. I am unable to determine therefore, if these stains did occur during the

Residential Tenancy Branch
Ministry of Housing and Social Development

tenancy and if any garbage was left at the rental unit from a previous tenant. Consequently I have reduced the landlords' total claim for repairs and cleaning of \$480.00 to **\$400.00**. As the landlord still had to do the remainder of the cleanup of the property as indicated by his documentary evidence, I find he is entitled to recover the costs of the carpet cleaner of **\$45.00** and mileage costs of **\$20.00** pursuant to s.67 of the *Act*.

The tenant does not dispute that she did not pay the rent for September, 2009. Therefore, I find the landlord is entitled to recover this unpaid rent of **\$1,250.00** pursuant to s.67 of the *Act*. I further find that the tenant did not give the landlord written notice to end the tenancy pursuant to s. 45 of the *Act*. The landlord was able to mitigate his loss for the remainder of October, 2009 by re-renting the unit again by October 03, 2009. Therefore, I find the landlord is also entitled to recover a loss of revenue for two days in October, 2009 of **\$80.00** pursuant to s.67 of the *Act*.

I Order the landlord to keep the tenants security deposit of **\$600.00** in partial payment of the outstanding rent pursuant to s.38 (4)(b) of the *Act*. As the landlord has been largely successful in this matter he is also entitled to recover his filing fee of **\$50.00** for this application pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the following amount:

Outstanding rent September, 2009	\$1,250.00
Cleaning and repairs	\$400.00
Rental of carpet cleaner	\$45.00
Mileage	\$20.00
Filing fee	\$50.00
Less security deposit	(-\$600.00)
Total amount due to the landlord	\$1,245.00

Conclusion



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Ministry of Housing and Social Development

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,245.00**. 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: February 04, 2010.

Dispute Resolution Officer