

## **DECISION**

### **Dispute Codes**

MNR, MNSD, MNDC, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, Regulation or tenancy agreement. The landlord also seeks 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 was done in accordance with section 89 of the *Act*, and was hand delivered to the tenant on November 20, 2009.

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**

- Is the landlord entitled to a monetary Order to recover rent owed and late fees?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss for carpet cleaning, house cleaning and advertising costs?
- Is the landlord entitled to keep the security deposit?

### **Background and Evidence**

This tenancy started on October 01, 2009. This was a fixed term tenancy for six months. The rent for this unit was \$650.00 per month and was due on the first of each month. The tenant paid a security deposit of \$325.00 on October 26, 2009.

The landlords' agent testifies that the tenant moved into the unit and gave him a cheque for her security deposit. When the landlord attempted to deposit this cheque it was returned as there were insufficient funds available (NSF). On October 20, 2009 the landlords' agent spoke to the tenant about this amount and reminded her there would be a \$50.00 NSF fee. The landlords' agent testifies that he attempted to contact the tenant about this sum again and she said she would deal with it if she had the time or felt like it tomorrow. The landlords' agent spoke to the owner of the property and it was decided to give the tenant a 10 Day Notice to End Tenancy for Unpaid rent. This was posted to the tenants' door on October 21, 2009.

The landlord testifies that on October 26, 2009 the tenant paid \$370.00 in cash for the security deposit and NSF fees. On November 01, 2009 the tenant failed to pay her rent and did not contact the landlords' agent. The landlords' agent testifies that another 10 Day Notice to End Tenancy was posted to the tenants' door on November 02, 2009. On November 07, 2009 the tenant put a rent cheque under the door of the landlords' agents' office. As this was a weekend the landlords' agent could not put it in the bank until November 09, 2009. He was told there were insufficient funds to pay the cheque. The landlords' agent called the tenant and left a message to inform her of this and to also inform her that the 10 Day Notice remains in effect and she would need to vacate the rental unit by November 12, 2009. The landlords' agent called the tenant again at work. She asked him to hold the cheque until Friday November 13, 2009.

The landlords' agent testifies that the tenant spoke to the owner of the unit on the same day and told him she had \$500.00 cash to give him and would pay the balance on Friday. The landlords' agent also spoke with the owner and it was agreed that as the tenant had given them two NSF cheques that the Notice to End Tenancy should remain in effect.

The landlords' agent testifies that the tenant moved out on November 17, 2009 and a move out condition inspection was completed. This inspection highlighted that the tenant had not thoroughly cleaned the unit and the carpet was left dirty with a white stain and sticky spots all over. The landlord seeks the cleaning costs for five hours at \$15.00 per hour to a total sum of \$75.00. The landlord seeks \$94.50 for carpet cleaning. The landlord had to re-advertise the

rental unit on November 18, 2009 and December 04, 2009 and incurred costs of \$88.20. The landlord testifies that the unit was re-rented for December 15, 2009 and seeks the half months loss of rental income from the tenant to a sum of \$325.00. The landlord also seeks to recover unpaid rent for November, 2009 of \$650.00.

The landlord requests an Order for him to keep the security deposit and to recover the \$50.00 filing fee.

The tenant disputes the landlords' agents' testimony. She claims she received the eviction notice on November 02, 2009 and on November 07, 2009 she went to the agents' home to pay him her rent in cash. As he was not at home she left him with a cheque. The tenant states that she knew her account had insufficient funds to cover this cheque but could not get to the bank to put the cash in to cover the cheque.

The tenant testifies that she tried to pay her rent again in cash on November 11, 2009 but the landlords' agent would not answer his door or meet with her. The tenant states that she called the owner to ask him if she could give him \$500.00 in cash from the rent owed and the remainder on the following Friday but the landlord would not accept this. She states she then moved out on November 17, 2009.

The tenant does not dispute that the carpets required cleaning; however, the tenant does dispute the time the landlord has claimed for the cleaning of the unit or that the pots and pans left in the unit belonged to her.

The landlords witness testifies that she helped the landlord agent clean the unit. She states that the inspection report accurately describes the condition of the unit at the beginning and end of the tenancy. The witness states that she had to clean the kitchen cupboards, drawers, and fridge, remove bottles from the storage area, the floor and carpets were left dirty and sticky and the bathroom was left dirty. The witness claims the landlords' agent cleaned the stove and the balcony of the unit. The witness states that the pots and pans were not in the unit at the start of the tenancy and were left behind by the tenant.

The tenant declines the opportunity to cross examine the witness.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. Section 26(1) of the *Act* states: A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or tenancy agreement, unless the tenant has the right under this *Act* to deduct all or part of the rent. Consequently I find the tenant did not pay the rent on the first of November when it was due. The landlord served the tenant with a 10 Day Notice to End tenancy on November 02, 2009. As this notice was posted to the tenants' door it was not deemed to have been served until three days after posting. Therefore, the tenant would have had five days to pay the rent or dispute the notice starting from November 05, 2009. The tenant gave the landlord a cheque knowing there were insufficient funds available to honor it on November 07, 2009. The tenant then wanted to pay \$500.00 from the outstanding rent on November 09, 2009. The 10 day Notice states that the tenant must pay all the rent owed within five days. Therefore, I find the tenant did not pay the rent as owed and I find the landlord has established his claim to recover rent for November, 2009 of **\$650.00** pursuant to s.67 of the *Act*.

With regards to the landlords claim for a loss of rental income for 15 days in December, 2009 of \$350.00; RTB Policy Guideline #3 states: Claims for Rent and Damages for Loss of Rent states that a landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a landlord is entitled is an amount sufficient to compensate the landlord for any loss of rent up to the earliest time the tenant could have legally ended the tenancy. I find that the landlord has established how he advertised the rental unit during November and December to attempt to mitigate his loss of rent for the remainder of the fixed term. As the unit was re-rented on December 15, 2009 I find the landlord is entitled to recover the 15 days of lost revenue from the tenant to a sum of **\$314.51**( 15 days at \$20.96) not \$350.00 as claimed by the landlord pursuant to s.67 of the *Act*.

With regard to the landlords claim for cleaning; I find he has provided sufficient evidence to support his claim that the tenant did not clean the rental unit thoroughly at the end of her tenancy and award him these costs to a sum of **\$75.00**. I also find the tenant did not clean the carpet at the end of the tenancy and by her own admission left the carpet in an unclean condition. I therefore find the landlord is entitled to recover the cost of carpet cleaning to a sum of **\$94.50** pursuant to s.67 of the *Act*.

With regard to the landlords claim to recover the costs incurred for re-advertising the rental unit. I find the landlord has established his claim to recover these amounts and therefore I award him **\$88.20** for this cost pursuant to s.67 of the *Act*.

I Order the landlord to keep the tenants' security deposit in partial payment towards the rent arrears.

As the landlord has been successful with his claim I find he is entitled to recover the **\$50.00** filing fee from the tenant. A Monetary Order has been issued for the following amount:

Rent for November, 2009	\$650.00
Cleaning costs	\$75.00
Carpet cleaning	\$94.50
Advertising costs	\$88.20
Filing fee	\$50.00
Subtotal	\$1,272.21
Less security deposit	(-\$325.00)
<b>Total amount due to the landlord</b>	<b>\$947.21</b>

#### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$947.20**. 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: March 26, 2010.

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Dispute Resolution Officer