

DECISION

Dispute Codes MNDC, MNR, RR, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request for a monetary order for \$1500.00 which includes the \$50.00 filing fee paid for the application for dispute resolution.

The landlord's application is a request for a monetary order for \$2009.06 plus the \$50.00 filing fee paid for the application for dispute resolution.

Tenants application

Background and Evidence

The tenant is claiming that:

- He has suffered a loss of use and enjoyment of the rental property due to health concerns caused by the other tenant in the rental property.
- He does not believe that the landlord has taken sufficient steps to deal with the health issues.
- The other tenant in the rental property caused an unsightly mess and left garbage around the property.
- The other tenant's ferrets have also entered the applicant's rental unit on numerous occasions and have urinated and defecated in his rental unit, both on the carpet and in his chest of drawers.
- The landlord did not ensure that the carpeting in the rental unit was properly cleaned to eliminate the urine and feces and restore a healthy condition.
- The landlord paid a friend of the applicant to do the cleaning but failed to provide the proper cleaning solution.
- He could not live in the rental unit due to the health concerns and as a result had to stay with a friend and pay rent and utilities to her.
- The applicant also believes that he is paying an unfair portion of the utilities.
- As a result of the above problems the applicant withheld rent and utilities and subsequently the landlord gave him a Notice to End Tenancy.
- He complied with that notice and vacated the rental unit pursuant to that notice

The applicant is therefore requesting an order as follows:

cost of photos, photocopying etc.	\$86.44
Moving costs	\$80.00
Furniture damaged by urine and feces	\$475.53
Postage expenses	\$74.60
Rent and utilities paid for alternate accommodation	\$720.00
Filing fee	\$50.00
Total	\$1500.00

The applicant/tenant is also asking that any unpaid rent be waived, and that there be a 20% reduction in his share of the utilities.

The respondent claims that:

- He has always responded in a reasonable fashion to all the tenants concerns.
- He has had discussions with the other tenant in the rental property with regards to the garbage and with regards to her ferrets, and each time the other tenant has assured him that she would deal with the problems.
- The tenants originally came to an agreement between themselves in which the other tenant in the rental unit agreed to clean up the mess left by her pets by April 17, 2010.
- As neither of the tenants had contacted him he assumed the cleanup had been done and therefore was surprised when on April 27 the applicant left another message regarding the cleanup.
- He had been fully willing to have a professional come in and clean the carpets in the rental unit however the applicant suggested that his friend do the cleaning as she needed the money and therefore he agreed to allow the tenants friend to clean the carpets.
- He agreed to supply the machine and the cleaning solution and pay the tenant's friend \$15 per hour.
- The tenant ask for one half months rent reduction for loss of use and enjoyment however he thought that was too high and so he offered the tenant one quarter month's rent reduction for a total of \$141.25 in the applicants accepted the offer.
- The applicant/tenants agreed then to pay the remainder of April 2010 rent plus May 2010 rent and the outstanding utilities.
- May 1, 2010 the applicant/tenant informed the landlord that there was still a smell in the rental unit, however because the carpets had not had sufficient time to dry the landlord wanted to ensure that they were properly dried before any decision was made as to whether there was still a need for further cleaning.
- May 4, 2010 the landlord brought fans to the rental unit to try and resolve the problem with the carpet smell.

- May 5, 2010 he took the utility bills to the tenant that that time the tenant stated that he was refusing to pay any further rent or the utility bills. And therefore on May 6, 2010 he served the tenant with a 10 day Notice to End Tenancy for non-payment of rent.
- The tenant vacated the rental unit and the keys were returned to the landlord on May 18, 2010.

The respondent therefore believes that he has acted responsibly in this matter and that the tenants claim should be dismissed in full.

Analysis

It is my decision that I will not allow any of the tenants claim. The problems experienced at the rental unit were not the result of any wilful or negligent actions on the part of the landlord, and in fact it is my finding that the landlord took reasonable steps to try and alleviate the problems.

The damages suffered by the applicant were the result of actions of another occupant of the rental property and not the landlord, and although the applicant feels that the landlord did not take reasonable steps to deal with the other tenant, it is my finding that the landlord has acted reasonably.

When informed of the build-up of garbage around the rental property the landlord spoke with the other occupant to try and resolve the matter, and although the matter may not have been resolved to the applicants satisfaction it was not the result of landlord's failure to act.

The landlord also informed the other occupant of the rental property that she must control the pet ferrets, and even though he did not cause the problem, he paid for the cleaning of the applicants carpets, and he offered a reduction in the rent.

Since the landlord has acted reasonably it is my decision that landlord cannot be held liable for the other occupant's failure to comply with the landlords requests.

Further the applicant/tenant has supplied no evidence to show that his share of the utilities was an unreasonable amount.

I am not willing to issue any monetary order in favour of the tenant, will not waived any of the outstanding rent, and will not order a reduction in the percentage of utilities to be paid.

Conclusion

The tenant's application is therefore dismissed in full without leave to reapply.

Landlords application

Background and Evidence

The applicant claims that:

- The tenant failed to pay April 2010 rent in the amount of \$315.00.
- The tenant also failed to pay the May 2010 rent in the amount of \$565.00 and as a result the landlord issued a 10 day Notice to End Tenancy for non-payment of rent.
- The tenant vacated pursuant to that notice, and returned the keys on May 18, 2010, however the rental unit was not re-rented for the month of June 2010 and therefore the landlord lost the full rental revenue of \$565.00 for June 2010.
- The tenant also refused to pay his share of utilities and therefore for the period of January 2010 through May 18, 2010 the tenant owes \$301.94
- The tenant also slammed a screen door in anger and as a result caused damage that cost \$150.00 to repair.

The applicant/landlord is therefore requesting an order that the respondent to pay the following:

April 2010 and tenant outstanding	\$315.00
June 2010 lost rental revenue	\$565.00
Outstanding utilities	\$301.94
Door damage	\$150.00
Filing fee	\$50.00

Total	\$1946.94
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The applicant is therefore requesting an order allowing him to keep the full security deposit towards this claim and requested a monetary order be issued for the difference.

Analysis

I already made a finding in the tenant's application that the tenant is liable for the full outstanding rent and utilities, and therefore I allow those portions of the landlords claim.

I also allow the landlords claim for lost rental revenue, because this loss was a result of the tenant's failure to pay rent which caused the eviction.

I also allow the claim for the filing fee, as the landlord does have a substantial claim against the tenant.

The claim for door damage is dismissed, because the landlord has not provided sufficient evidence to meet the burden of proving that this damage was caused by the tenant. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Conclusion

I have allowed \$1796.94 of the landlord's claim. I therefore order that the landlord may retain the full security deposit:

\$282.50

I further Ordered that the Respondent/tenant pay to the Applicant/landlord the following amount:

\$1514.44

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: June 25, 2010.

Dispute Resolution Officer