

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit, unpaid rent, retention of the security deposit and recovery of the filing fee. The tenant did not appear at the hearing. The landlord provided registered mail receipts as proof of service of the landlord's Application for Dispute Resolution and evidence on December 24, 2009 and May 18, 2010. The registered mail of December 24, 2009 was sent to the address provided by the tenant at a previous dispute resolution hearing and was successfully delivered. The registered mail of May 18, 2010 was returned to the landlord as unclaimed. I determined service of the landlord's application and evidence was sufficient and I proceeded to hear from the landlord without the tenant present.

Issues(s) to be Decided

1. Has the landlord established an entitlement to a Monetary Order for damage to the rental unit?
2. Has the landlord established an entitlement to a Monetary Order for unpaid rent?
3. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The landlord provided the following testimony. The tenancy started July 2009 and ended November 2009 when the tenant vacated. The tenant paid a \$800.00 security deposit and was required to pay rent of \$1,600.00 on the 1st day of every month. The tenant withheld \$250.00 from October 2009 rent as compensation for allegedly cleaning the gutters and repairing the patio door lock, without consent of the landlord. The tenant did not pay rent for November 2009. On November 2, 2009 the tenant told the landlord to use the security deposit for half of November's rent and the tenant would pay the other half on November 15, 2009. The landlord did not accept this proposal and

when the landlord attended the property to collect the rent the tenant became abusive towards the landlord.

In making this application, the landlord is seeking to recover the following amounts:

Unpaid rent – October 2009	\$ 250.00
Unpaid rent – November 2009	1,600.00
Damages to the rental unit	<u>750.00</u>
Total	\$ 2,600.00

The landlord described the damages as a lack of cleaning by the tenant, damaged blinds, hinges removed from doors, damaged window sill and fence panels, plugged sink, gutters full of leaves, and holes and garbage in the yard. The landlord provided photographs of the property but did not provide receipts to substantiate cost of repairs. Rather, the landlord estimated her time spent cleaning and repairing items was 3 hours.

Analysis

Under the Act, a tenant must pay rent when due in accordance with the terms of the tenancy agreement and must not withhold rent unless the tenant has the legal right to do so. Upon consideration of the undisputed testimony before me, I find the landlord has satisfied me that the tenant withheld \$1,850.00 in rent and did not have the authority to withhold any rent. Therefore, I award the landlord \$1,850.00 for unpaid rent for the months of October and November 2009.

In the absence of evidence to support the cost of repairs incurred by the landlord to remedy damages caused by the tenant, I deny the landlord's claim for damages with the exception of the three hours spent by the landlord cleaning the rental unit. Further, some repairs I did not consider to be an ordinary responsibility of a tenant, such as gutter cleaning. Therefore, I award the landlord \$60.00 for her time spent cleaning.

As the landlord was partially successful in this application I award the landlord a portion of the filing fee. I award the landlord \$35.00 towards the filing fee. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid rent	\$ 1,850.00
Cleaning	60.00
Filing fee	35.00
Less: security deposit	<u>(800.00)</u>
Monetary Order for landlord	\$ 1,145.00

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Court) to enforce as an Order of that court.

Conclusion

The landlord was partially successful in this application. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,145.00 to serve upon the tenant.

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 11, 2010.

Dispute Resolution Officer