

## **DECISION**

Dispute Codes      OPR, OPC, MNR, FF

### Introduction

This hearing dealt with the landlord's application for an Order of Possession and Monetary Order for unpaid rent. Both parties appeared at the hearing and were provided the opportunity to be heard.

At the commencement of the hearing I heard that the tenant has vacated the rental unit; therefore, an Order of Possession is not required and I do not provide one with this decision.

The landlord's request for a Monetary Order for unpaid rent is net of the tenant's security deposit and includes charges for cleaning. The tenant also requested the security deposit be addressed during this hearing. Therefore, I amend the landlord's application to include a request to retain the tenant's security deposit and for compensation for damages to the rental unit.

I noted at the commencement of the hearing that there was a lack of documentary evidence in this file. Other than the Application for Dispute Resolution only a drapery cleaning receipt was before me. The landlord claimed that the documentary evidence was sent to the Residential Tenancy Branch via registered mail. The landlord was asked to provide the registered mail tracking number as evidence of service but the landlord was unprepared to provide this information during the hearing. The tenant claims that he could not recall with certainty the documents served upon him as he had

misplaced the documents and confirmed that he had to obtain information about the teleconference call by contacting the landlord.

It is upon the party who serves a document to prove service took place. In this case, the landlord was unable to sufficiently prove that service of evidence took place upon the Residential Tenancy Branch or the tenant. Therefore, I proceeded to accept only verbal testimony from the parties and the drapery cleaning receipt.

#### Issues(s) to be Decided

1. Has the landlord established an entitlement to recover loss of rent from the tenant and cleaning charges?
2. Should the security deposit be retained by the landlord or refunded to the tenant, or a combination of both?

#### Background and Evidence

The parties provided undisputed evidence as follows. The tenancy commenced May 1, 2009. The tenant paid a \$603.50 security deposit and a \$50.00 remote deposit. The tenancy agreement provided that the tenant was required to pay rent on the last day of the preceding month; however, the tenant ordinarily paid rent on the 1<sup>st</sup> day of the current month. On March 21, 2010 the landlord issued 1 Month Notice to End Tenancy for Cause to the tenant with an effective date of April 30, 2010. On March 25, 2010 the tenant provided and the landlord accepted a written notice to end tenancy from the tenant with an effective date of April 30, 2010. A few days before the end of March 2010 the landlord and tenant had a discussion about the tenant vacating the rental unit on March 31, 2010. The tenant vacated the rental unit on March 31, 2010 and the parties participated in a move-out inspection together. The tenant signed the move-out inspection report. The rental unit was re-rented as of April 15, 2010.

On April 15, 2010 the landlord filed this application in order to recover the following amounts from the tenant:

Loss of rent (one-half of April 2010 rent)	\$ 603.50
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General cleaning	64.00
Carpet cleaning	70.00
Drapery cleaning	<u>68.00</u>
Total claim	\$ 805.50
Less: security deposit	(603.50)
Less: remote deposit	<u>(50.00)</u>
Net claim	\$ 152.00

The landlord submitted a receipt for drapery cleaning in the amount of \$78.00.

The parties were in disagreement as to whether the tenant should be held responsible for loss of rent for April 2010. The tenant claimed that when the parties discussed ending the tenancy at the end of March 2010 he asked the landlord if there would be any penalties for ending the tenancy at the end of March instead of the end of April 2010 and that the landlord advised him there would be no penalties. In response, the landlord stated he could not clearly remember the conversation in detail but claimed that his ordinary response in such a situation would be to advise the tenant he could leave early but would be responsible for the next month's rent if a replacement tenant could not be found. The tenant denied the landlord made this statement as the tenant had the option to take his new rental accommodation at the end of March or at the end of April 2010 and he would not have vacated at the end of March 2010 if he thought he would be held responsible for April's rent.

Upon enquiry, the landlord testified that the cleaning charges relate to cleaning of the kitchen floor, bathroom floor, range, and windows. The tenant objected to paying for these amounts as he had hired a cleaner to clean the rental unit and the rental unit was left sufficiently clean. The landlord acknowledged that the rental unit was left in a

generally good condition but further cleaning was required to bring the unit up to an acceptable standard for the in-coming tenants.

The landlord read from the tenancy agreement to establish that the tenancy agreement required the tenant to professionally clean the carpets and drapes at the end of the tenancy regardless of the length of the tenancy. The term of the tenancy agreement also required the tenant to provide a receipt of such cleaning. The tenant objected to paying for carpet cleaning as he claimed to have had the carpets cleaned one month before the tenancy ended but acknowledged he paid cash and did not have a receipt.

With respect to the move-out inspection report, the tenant claimed he was not provided a copy when the inspection report was signed. The tenant could not recall whether a copy was later forwarded to him. The landlord testified that at the end of an inspection a copy of the inspection report is available to tenants if they request it but many tenants do not request a copy and the tenant in this case did not. The landlord was uncertain as to whether a copy of the inspection report was mailed to the tenant at a later time.

### Analysis

Based upon the testimony I heard, it is clear that the tenancy was set to end on April 30, 2010 by virtue of the Notices to End Tenancy issued by the landlord and the tenant; however, the tenancy ended earlier, on March 31, 2010, when the tenant vacated. I am satisfied the landlord was aware the tenant was going to move out at the end of March 2010 as the parties participated in a move-out inspection together and I find it likely the parties had a discussion to end the tenancy on March 31, 2010 in the days that preceded March 31, 2010. I am satisfied the landlord accepted that the tenancy would end on March 31, 2010 and made sufficient efforts to re-rent the unit as soon as possible.

Residential Tenancy Policy Guideline 3 provides that where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord can accept the abandonment or end of the tenancy, with notice to the tenant of an intention to claim

damages for loss of rent for the remainder of the term of the tenancy. I accept that the tenant breached the tenancy agreement by giving improper notice to end the tenancy as of March 31, 2010; however, I find the determining issue is whether the tenant was put on notice that the landlord would claim for loss of rent if the rental unit could not be re-rented for April 1, 2010.

Since this is the landlord's claim, the landlord has the burden to prove the entitlement to compensation from the tenant. I find the tenant provided a more reliable recollection of the conversation that occurred before the end of March 2010 and although the tenant's recollection pertained to "penalties", the landlord's testimony did not satisfy me that he had put the tenant on notice that the landlord would claim for loss of rent if the rental unit could not be re-rented. Therefore, I deny the landlord's claim for loss of rent for the first half of April 2010.

Having heard undisputed testimony that the tenant did have the unit cleaned at the end of the tenancy, clearly this is an issue as to whether the unit was to a certain standard of cleanliness. The Act requires that a tenant leave a rental unit "reasonably clean" at the end of a tenancy. The standard of "reasonably clean" is less than other standards such as perfectly clean or impeccably clean. I find the tenant likely left the unit reasonably clean and the landlord's decision to perform additional cleaning was to bring the rental unit to a higher standard. Bringing the rental unit to a state of cleanliness greater than "reasonably clean" is an expense of the landlord. Accordingly, I dismiss the landlord's claim for general cleaning.

Upon hearing the landlord read from the tenancy agreement I am satisfied the tenant had agreed to have the drapes and carpets professionally cleaned at the end of the tenancy and that the parties had agreed this is the standard expected of the tenant in

order to find the carpets and drapes "reasonably clean". In order to satisfy this term the tenant had agreed, by signing the tenancy agreement, that he would have to provide a receipt to the landlord in order to avoid a claim by the landlord for cleaning the carpets

and drapery. In the absence of a receipt from the tenant, I find the tenant responsible for the carpet cleaning and drapery cleaning charges. I find the landlord's claims of \$70.00 and \$68.00 for carpet and drapery cleaning to be reasonable and I award those amounts to the landlord.

The Act requires the landlord to provide the tenant with a copy of a move-in and move-out inspection report. The move-out inspection report must be given to the tenant within 15 days of receiving the forwarding address. I was not provided sufficiently convincing testimony or evidence to establish whether the landlord met this obligation or not and I do not find the landlord extinguished its right to make a claim against the security deposit.

In light of the above findings, I award a total of \$138.00 to the landlord for carpet and drapery cleaning and I further award a portion of the filing fee to the landlord. The landlord is hereby authorized to retain \$145.00 from the tenant's security deposit and must return the balance of the security deposit and the remote deposit to the tenant forthwith.

Enclosed with this decision is a Monetary Order for the balance owing to the tenant of \$508.50 ( $\$603.50 + \$50.00 - 145.00$ ) to ensure payment is made. The tenant may enforce this Monetary Order by serving it upon the landlord and filing it in Provincial Court (Small Claims).

### Conclusion

The landlord has been authorized to retain \$145.00 of the tenant's security deposit and must return the balance of the tenant's deposit of \$508.50 to the tenant forthwith. The

tenant has been provided a Monetary Order in the amount of \$508.50 to serve upon the landlord.

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 03, 2010.

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Dispute Resolution Officer