

DECISION

Dispute Codes

MND, MNR, MNSD, MNDC, FF

Introduction

This was an application by the landlord for a monetary order for loss of revenue in the amount of \$850, damage to the unit (undisclosed), unpaid rent of \$425, and to keep the security deposit in the amount of \$425. The application is inclusive of recovery of the filing fee. The burden of proof for these claims rests with the applicant.

Both parties attended the hearing and were given a full opportunity to present evidence, make submissions, and provide sworn testimony. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for loss of revenue?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for damages?

Is the landlord entitled to retain any of the security deposit?

Background and Evidence

The parties to this matter have previously been before a Dispute Resolution hearing in respect to this tenancy. The undisputed testimony and evidence of the landlord and tenant is that the tenancy started March 16, 2008 and ended when the tenant vacated on September 30, 2008. The landlord submitted a copy of the tenancy agreement, showing that at the outset of the tenancy the landlord collected a security deposit in the amount of \$425. The balance of the parties' sworn testimony is in contrast, as follows.

The landlord claims the tenant gave one month's notice to vacate on August 31, 2008 - ending the tenancy on September 30, 2008 - one month earlier than the tenancy agreement allowed. The landlord claims the tenancy agreement was a fixed term tenancy ending October 31, 2008. The tenant claims it was *not* a fixed term tenancy, and that the parties also had a verbal agreement that if the tenancy, "did not work out" the tenant could vacate with one month's written notice. Each party deferred to the tenancy agreement.

The landlord testified that the tenant short-changed the rent for their last month of occupancy by \$425. The tenant denies the landlord's claim. The landlord did not provide any supporting evidence for this portion of their application.

The landlord testified that when the tenant vacated they did not clean the carpeting in the unit. The landlord claims the tenant's cat left an odour in the carpets. The tenant testified that what the landlord refers to as carpeting were pieces of carpet remnants loosely arranged, old and unclean from the outset, which were cleaned by the tenant to the best of their ability before vacating . The landlord claims the carpeting was left with an odour that the landlord determined would compete with their own cat, once they moved back in. The landlord also claims there is wall to wall carpeting in the basement, whereas the tenant claims no carpeting existed in the basement during the tenancy. The landlord has not provided evidence supporting a claim for carpet cleaning, or the condition of carpeting in the rental unit.

The landlord also testified that the tenant left a recliner chair in the rental unit when they vacated, which had to be removed - for which the tenant upstairs took possession.

The evidence of the landlord and the tenant is that the security deposit was determined by a previous decision of a Dispute Resolution Officer.

Analysis

On preponderance of the evidence and the testimony of the parties I have reached a decision.

I find that the application in respect to the security deposit is *res judicata* : already been decided in the appropriate forum, and therefore **I dismiss** this portion of the landlord's application for the security deposit, again, without leave to reapply.

With the onus of proof resting on the landlord, **I find** the landlord has not provided the required proof respecting their claim for unpaid rent in the amount of \$425. Therefore, **I dismiss** this portion of the landlord's application for unpaid rent, without leave to reapply.

I find the landlord has not provided proof in respect to their claim for unclean carpets or for carpet cleaning. Therefore, **I dismiss** these portions of the landlord's application for damages, without leave to reapply.

I find the landlord's claim for compensation for removing the tenant's recliner chair is unsupported by proof the landlord incurred an expense or inconvenience. I accept the

landlord's evidence that the upstairs tenant simply took possession of it. Therefore, I **dismiss** this portion of the landlord's application for damages, without leave to reapply.

In respect to the landlord's claim for loss of revenue, because the tenant ended the tenancy earlier than the fixed term of the tenancy agreement, the tenancy agreement states as follows:

- The tenancy agreement has a *check mark* beside the wording:
"The term is to run from month to month",
- The tenancy agreement then states,
OR,
"The tenancy is for a fixed term, beginning on the 16 day of March, 2008 and ending on the 31 day of October, 2008."

I **find** the tenancy agreement is ambiguous at best, as to the term; and, on the face of the evidence, and even on the balance of probabilities, I cannot accept the landlord's evidence that the tenancy was clearly for a fixed- term. The landlord has not proven this claim. As a result, I must **dismiss** this portion of the landlord's application for loss of revenue, without leave to reapply.

Conclusion

As a result of all the above, the landlord's application **is dismissed in its entirety**, without leave to reapply.

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*.