

DECISION

Dispute Codes: *MNSD, MNDC, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of cleaning, replacement of a light bulb, loss of income and for the filing fee.

The landlord also applied to retain the security deposit. However, by the time the hearing took place the landlord had already returned the security deposit and the tenant acknowledged having received it along with the rent for the last month of the tenancy that the landlord had collected from the tenant, at the start of the tenancy. Therefore, this hearing only addressed the landlord's claim for a monetary order for cleaning, repairs, rental loss and the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim for costs incurred to clean and repair the rental unit and replace a bulb? Is the landlord entitled to loss of income and the filing fee?

Background and Evidence

The tenancy started on October 01, 2009 for a fixed term of one year. Rent was \$2,250.00 per month due on the first of the month.

The landlord stated that during a conversation with the tenant regarding some maintenance issues, the landlord indicated that she intended to sell the rental unit upon completion of the fixed term tenancy. The tenant expressed some interest in purchasing the unit but informed the landlord that she would be looking at other units before making a decision. On January 15, 2010, the tenant informed the landlord that she had found a unit that she intended to purchase.

The landlord offered her the option of subletting the unit until the end of the fixed term. The landlord subsequently decided to list the unit for sale and in February, the landlord

had an offer for sale with a closing date of March 31, 2010. The landlord requested the tenant to move out prior to April 01, 2010 and the tenant agreed to do so.

However, the sale did not go through, but the tenant had already made arrangements to move out and did so on March 28, 2010. The landlord continued to look for a buyer and one was found for a closing date of May 01, 2010.

A move out inspection was done on April 07 and the report was signed by the tenant. The tenant disagreed with two items on the report. She stated that the plaster chips were not caused by her and that she was not provided with a second fob. The move out inspection report identified some stains on the carpet, a burnt out bulb and some holes in the wall. The tenant agreed to take responsibility for these items.

The landlord is claiming the following:

1.	Carpet cleaning	\$94.50
2.	FOB	\$100.00
3.	Move out fee	\$125.00
4.	Loss of income for April	\$2,250.00
5.	Carpet damage	\$2,500.00
6.	Wall Repair and Paint	\$1,500.00
7.	Photos, light bulbs etc	\$20.00
8.	Register mail	\$13.00
9.	Filing fee	\$50.00
	Total	\$6,652.50

Analysis

The tenant did not dispute the cost of carpet cleaning \$94.50, move out fee \$125.00 and the cost of replacing one bulb \$5.00.

FOB \$100.00

The landlord stated that he mailed the fob in an envelope to the tenant by regular mail. The tenant states she received the envelope with two metal keys and a note, but

without a fob. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. Based on the testimony of both parties, I find that the landlord placed the fob in a paper envelope instead of a sturdier container and mailed it by regular mail. Therefore, even though I accept that the landlord mailed the fob, I find that the landlord has not met the burden of proof that it was received by the tenant as it could have easily gone astray during the mailing process. Accordingly the landlord's claim for \$100.00 is dismissed.

Loss of income for April \$2,250.00

Based on the testimony of both parties, I find that the tenant had entered into a fixed term tenancy and ended the tenancy prior to the end date. However, the landlord had listed the unit for sale and therefore the unit was not available for a new tenant for the month of April.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Pursuant to *Residential Tenancy Policy Guideline #3*, placing the property on the market for sale will not constitute mitigation. Accordingly, I find that the landlord is not entitled to loss of income for the month of April and her claim for \$2,250.00 is dismissed.

Carpet Damage \$2,500.00

The tenant agreed to take responsibility for the stains on the carpet. Both parties attempted to remove them without success. The landlord sold the unit without replacing

the carpet as the new owner decided to do it with a deduction off the selling price of the unit. The landlord stated that the carpet was approximately six years old at the time of the sale of the unit. *Residential Tenancy Policy Guideline #37* addresses the useful life of an item. According to this guideline the useful life of a carpet is ten years. Since the carpet was six years old, it would have had four more years of useful life. Therefore I find it appropriate to award the landlord the prorated amount of \$1,000.00 towards the replacement of the carpet.

Wall Repair and Paint \$1,500.00

The tenant agreed that she had made six holes in the walls to hang pictures. She stated that these holes were placed in appropriate areas which would be useful to the new occupants of the home. The landlord has not filed any evidence to support his monetary claim of \$1,500.00. The two photographs he has filed indicate minimal damage to the wall. Since the tenant has agreed to having put six holes in the wall, I find it reasonable to award the landlord \$200.00 towards the repairs.

Photographs, Light bulbs etc. \$20.00; Mailing costs \$13.00

The tenant agreed to pay for the cost of one light bulb in the amount of \$5.00. The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the landlord's claim for photos and mailing costs is dismissed.

Filing Fee \$50.00

Overall the landlord has established a claim of 1,424.50 of her total claim of 6,602.50. Accordingly, I will award the landlord a portion of the filing fee in the amount of \$10.00.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$1,434.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for the amount of **\$1,434.50**.

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: July 26, 2010.

Dispute Resolution Officer