



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order to recover unpaid rent, for damage to the rental unit and for money owed or compensation for damage or loss under the Residential Tenancy Act,(Act), Regulations or tenancy agreement. The landlord also seeks an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent to the tenant by registered mail on April 14, 2010 and by posting under the tenants door. The tenant confirmed receipt of these documents.

The landlord and one of the tenants appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for damages?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both parties agree that this tenancy started on April 15, 2009 as a fixed term tenancy to run for one year with an expiry date of May 01, 2010. Rent for this unit was \$2,350.00 per month and was due on the first of each month. The tenants paid a security deposit of \$1,175.00 on April 01, 2009. The landlord and tenants completed a move in and a move out condition inspection report and the tenants provided their forwarding address to the landlord on the move out report on April 03, 2010.

The landlord testifies that the tenants decided to move from the rental unit and end the tenancy a month before the end of the fixed term. The landlord states the tenants were fully moved out on April 03, 2010 and they put a stop on their rent check for April, 2010. This cheque was returned by the bank and the landlord seeks to recover bank charges of \$25.00.

The landlord testifies that he attempted to re-rent the unit during April but was unable to find new tenants until May 01, 2010. The landlord states that on the move out condition inspection report he has stated that if he was able to re-rent the unit for April then the tenants would not be responsible for rent for this month.

The landlord testifies that the tenants agreed he could keep \$250.00 from the security deposit to cover cleaning and damaged to the rental unit. The landlord has provided a copy of this page of the inspection report.

The landlord seeks to keep the remainder of the security deposit to offset against the rent owed for April of \$2,350.00 and to recover the filing fee of \$50.00.

The tenant disputes the landlords claim for unpaid rent. The tenant testifies that he was unable to continue to pay his rent. The tenant claims that on March 25, 2010 he told the landlord that the rent cheque for April would bounce and that they would have to end the tenancy. The tenant testifies that he did not think this would be a problem as he states he asked the landlord about

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the repercussions of ending the tenancy early at the start of the tenancy and was told as long as they put in sufficient effort to re-rent the unit they would be able to end the tenancy early. The tenant states he tried to re-rent the unit and showed it to prospective tenants on multiple occasions.

The tenant states he did agree the landlord could keep \$250.00 to cover cleaning and damages but expected the landlord to return the remainder of the security deposit to them.

The tenant raises other issues which are not relevant to this hearing.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 45 (2) of the *Act* states:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The evidence provided by the landlord shows the landlord agreed to return the balance of the security deposit only if he could re-rent the unit during April. This agreement was signed by the tenant on the move out condition inspection report. As the landlord was unable to re-rent the unit until May 01, 2010 I find the tenants are responsible for rent for this month in line with the

terms of the fixed term tenancy agreement. Consequently, I find the landlord has established his claim for unpaid rent for April, 2010 and is entitled to a monetary award of **\$2,350.00**.

The Move out condition inspection form shows the tenants agreed that the landlord could keep \$250.00 from their security deposit for damages and cleaning to the rental unit. As this has already been agreed then no further orders regarding this portion of the security deposit will be issued.

The landlord seeks to recover \$25.00 for bank charges due to the tenants bounced rent cheque for April, 2010. However the evidence provided by the landlord shows these charges are actually \$5.00 not the \$25.00 claimed. Consequently, I find the landlord is entitled to recover the sum of **\$5.00** from the tenants pursuant to section 67 of the Act.

As the landlord has been largely successful with his claim I find he is entitled to keep the balance of the security deposit pursuant to section 38(4)(b) of the Act. I also find he is entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the Act. A Monetary Order will be issued for the following amount:

Unpaid rent for April, 2010	\$2,350.00
Filing fee	\$50.00
Subtotal	\$2,405.00
Less the balance of the security deposit after deduction of \$250.00 agreed upon	(-\$925.00)
Total amount due to the landlord	\$1,480.00

Conclusion



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I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,480.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

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: August 17, 2010.

Dispute Resolution Officer