



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent and for damage to the rental unit, site or property, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, the landlord served the tenant in person, and by registered mail on May 24, 2010 and again by registered mail on September 10, 2010. The tenant was deemed to be served the hearing documents on the day they were served to him in person and the subsequent service with hearing documents and evidence the fifth day after they were mailed as per section 90(a) of the *Act*. The Residential Tenancy Branch also sent the tenant a letter with the reconvened hearing date and time after the hearing was adjourned in July, 2010.

The hearing was adjourned as the Dispute Resolution Officer had not received the landlords' evidence in time for the hearing. The landlord was asked to resend this evidence and the hearing reconvened on today's date.

The landlords' agent appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for?
 - a) Unpaid rent
 - b) Damage to the rental unit
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

This tenancy started on May 01, 2004. This started as a fixed term tenancy for one year and reverted to a month to month tenancy at the end of the fixed term. Rent for this unit was \$1,250.00 and was due on the first of each month. The tenant paid a security deposit of \$575.00 on May 01, 2004.

The landlords' agent states the tenant did not give the required one months notice to end tenancy in writing. He states the tenant gave verbal notice to end the tenancy on January 03, 2010 and moved from the rental unit on February 05, 2010. The landlord seeks to recover rent for February of \$1,250.00 as incorrect notice was given and the tenant continued to reside in the rental unit until February 05 which prevented the landlord being able to re-rent the unit throughout February, 2010.

The landlords' agent has provided a copy of the move in and move out condition inspection report. This report indicates the damages caused by the tenant during his tenancy and the cleaning that was required at the end of the tenancy which the tenant failed to do. The landlord has provided an itemised list of the damages that were repaired and the cleaning undertaken, he has also included the invoices for this work to a total sum of \$1,702.39 including taxes.

The damages are as follows:

Living room - Carpets heavily stained, dining room ceiling damaged, fire place door off and glass broken.

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Hall – closet bi-fold doors off and one damaged with large hole, sliding track damaged.

Kitchen – oven and fridge left filthy, cupboards stained and unwashed, cover for ceiling light missing, cabinet door broken, dishwasher surround broken, large hole in gyprock, pantry door broken off track, floor unwashed.

Stairs and landing – carpets heavily stained, walls scratched, smoke alarm broken, doors tracks bent and one door with large hole.

Storage room – window screen broken.

Bathroom – bath, toilet and hand basin left in filthy condition, window handle broken.

Bedroom 1 – bi-fold pivot missing from track, carpet filthy, window coverings missing, and door with large hole punched in it.

Bedroom 2 – walls dirty, five tennis ball size holes in gyprock, closet door broken off track, carpet filthy, urine on wall and carpet, bedroom door with large hole punched in it.

Storage locker and parking stall – upswept and dirty.

The landlord states the tenant was present when the move out condition inspection was conducted but he was not interested in walking through the unit with the landlord and refused to sign the report at the end of the inspection. The landlords' agent states the tenant was angry and told him that he would just walk away from his security deposit.

The landlord seeks to keep the tenants security deposit of \$575.00 and accrued interest of \$20.37 to offset against money owed by the tenant for damages to the rental unit.

The landlord also seeks to recover his \$50.00 filing fee from the tenant for this proceeding.

Analysis

RTB Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent. A landlord is entitled to an amount sufficient to compensate him for any loss of rent up to the earliest time the tenant could have legally ended the tenancy. Under section 45 of the *Act*, a tenant of a month-to-month tenancy must give one clear months notice. The tenant continued to reside at the rental unit until February 05, 2010 and did not provide the landlord with written notice to end the tenancy.

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Consequently, the earliest the tenant could have ended the tenancy would have been March 31, 2010. The landlord only seeks to recover a loss of rental income for February, 2010 and as a result I find he has established his claim for loss of rent of **\$1,250.00**.

Section 32 of the *Act* states: A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Section 32 also states: A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

I find the tenant vacated the rental unit without cleaning it as required under the section 32 of the *Act*. The landlord has incurred costs to clean the unit over and above what he would normally have to do to prepare it for a new tenant. I also find the landlord has met the burden of proof with regard to damages caused by the tenant or a person permitted on the property by the tenant. Consequently, I find the landlord has established his claim for damages and cleaning to the sum of **\$1,702.39**.

It is my decision that the landlord is entitled to keep the tenants security deposit and accrued interest totaling **\$595.37** to offset against the costs incurred to repair and clean the rental unit pursuant to section 38 (4) (b) of the *Act*.

As the landlord has been successful with his claim he is also entitled to recover his **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

| | |
|--|-------------------|
| Loss of rental income for February | \$1,250.00 |
| Subtotal | \$2,952.39 |
| Filing fee | \$50.00 |
| Less security deposit and accrued interest | (-\$595.37) |
| Total amount due to the landlord | \$2,407.02 |

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Conclusion



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I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,407.02**. The order must be served on the respondent 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: September 15, 2010.

Dispute Resolution Officer