



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** MNR, MNSD, FF

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for unpaid rent, to recover the costs of cleaning and repair to the rental unit and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. 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 unpaid rent and costs incurred to repair and clean the rental unit? Is the landlord entitled to retain the security deposit?

### **Background and Evidence**

The tenancy started on September 01, 2009 and ended on May 11, 2010. The tenant paid a security deposit in the amount of \$350.00. The rental unit was located in the basement of the landlord's home. The landlord lived upstairs.

The landlord stated that sometime in the middle of April, the tenant told him that he would be moving out by the middle of May and requested the landlord to retain the security deposit as rent for half of May. The landlord informed the tenant that one full calendar month notice was required to end tenancy and advised the tenant that rent for the full month was payable on the first of May.

The tenant filed two typed notes into evidence. One was dated April 29, 2010 and was notice to end the tenancy. The other was from a witness dated September 15, 2010 and stated that on April 29, 2010; he witnessed the male tenant giving written notice to end tenancy to the landlord along with \$700.00 cash as rent for May. The note did not describe any other details.

The female tenant stated that on April 29, she served the landlord with a written notice to end tenancy when he came to the door. She stated that she also paid \$700.00 for rent for May. The tenant initially stated that she withdrew cash from the bank to pay rent. Since the landlord denied having received rent, I asked the tenant if she was able to provide evidence to support her claim of having withdrawn \$700.00 from her bank account on April 29, 2010. The tenant replied that she was mistaken and had not withdrawn money from the bank but had borrowed money from her parents for rent. The landlord denied having visited the tenant on April 29 and also denied having received both the written notice and rent for May,

The tenant moved out on May 11 and stated that she left the keys, her forwarding address and phone number in the landlord's mail box. The landlord contacted her on May 13 to request rent for May and to serve her the notice of hearing. The tenant did not ask for the security deposit and the landlord pointed out that the tenant assumed that the security deposit would cover the rent for half of May. The tenant testified about the sequence of events and did not mention asking the landlord for the security deposit.

The landlord stated that the tenant left the unit in an unclean condition, left two garbage bags outside and damaged two light covers. The landlord filed photographs to support his claim of \$50.00 for cleaning and \$30.00 for the light covers. The landlord is also claiming \$700.00 for rent for May and \$50.00 for the filing fee.

### **Analysis**

The testimony of the tenant and the landlord is conflicting with regard to rent for May. The tenant stated that she paid it and the landlord denied having received rent for May. 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.

The statement from the witness indicates that he witnessed the male tenant paying rent to the landlord on April 29 while the female tenant stated that she paid rent to the landlord. In addition the female tenant contradicted herself when she testified about the source of the cash she used for rent. Based on the above I find that the tenant did not have adequate evidence to support her claim that she had paid rent for the month of May. Therefore I find that the landlord is entitled to rent in the amount of \$700.00.

Regarding the landlord's claim for cleaning, the photographs indicate that the tenant left the unit in a fairly clean condition and as per the verbal arrangement, left only two garbage bags on the side of the house which needed to be put to the curb on the day of garbage collection. I find that the landlord has not established a claim for cleaning. The landlord has filed a photograph showing two damaged light bulb covers. Therefore I find that the landlord is entitled to \$20.00 to replace them.

Since the landlord has proven the majority of his claim, I find that he is entitled to the recovery of his filing fee in the amount of \$50.00.

Overall the landlord has established a claim for \$700.00 for rent, \$20.00 for repairs and \$50.00 for the filing fee for a total of \$770.00. I order that the landlord retain the security deposit of \$350.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$420.00. 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 **\$420.00**

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 29, 2010.

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Dispute Resolution Officer