

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, 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 unit and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. The landlord also applied for an Order to keep the security deposit and a Monetary Order to recover the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on May 21, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant confirmed receipt of the landlords hearing documents and evidence. The landlord has reduced the monetary claim and provided an amended monetary breakdown for her claim.

Both parties 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 for unpaid rent?

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- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Is the landlord entitled to a Monetary Order for money owed or compensation or damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both Parties agree that this tenancy started on June 01, 2009. A written tenancy agreement was in place which shows that this was a fixed term tenancy for one year and was due to expire on May 31, 2010. Rent for this unit was \$2,500.00 per month and was due on the first of each month. The tenant paid a security deposit of \$1,250.00 on April 23, 2010.

The landlord testifies that before she rented the unit she had it up for sale. When she had difficulty selling it she decided to rent it for a fixed term to the tenant. The tenant asked her not to have it on the market during his tenancy as he did not want it shown during this period. The landlord testifies that the tenant sent a letter dated March 30, 2010 to end the tenancy on April 30, 2010 one month before the end of the fixed term. The landlord states she did not know what to do and was undecided whether to sell the unit or move back into it herself.

The landlord testifies that the tenant stopped his rent cheque for May, 2010 and this was returned to the landlord. The landlord seeks to recover rent for May up to the end of the fixed term of the tenancy.

The tenant disputes that he owes rent for May, 2010. The tenant testifies that he did send the landlord a letter to end the tenancy and told her he would seek to advertise the unit to find a new tenant to take over the tenancy. The tenant states he found a potential

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tenant who agreed to pay a higher rent of \$2,600.00 for the unit and would take over his tenancy. The tenant states he made an appointment with the landlord to meet the tenant but she cancelled this as she told the tenant she was still unsure what she wanted to do with the unit. The tenant states he cancelled the advert for the unit on either April 06 or 07, 2010 as the landlord told him not to find anyone else to rent the unit. The tenant states that the landlord did not meet her obligations to re-rent the unit and to mitigate her loss in rent for May, 2010.

The landlord testifies that the tenant left a large amount of wiring at the rental unit for his internet service. The landlord states she only gave the tenant permission to wire his internet service into a storage closet but she was left with wires running all around the unit. The landlord seeks to recover the cost to remove this wiring at a sum of \$190.40 and has provided the receipt for this work.

The landlord also testifies that due to the wiring she had to pay \$168.00 to have the walls repaired and seeks to recover this from the tenant. The landlord testifies that the tenant did not clean the balcony or the stove and she seeks costs of cleaning this herself for two hours at \$35.00.

The tenant testifies that the removal of the wires and any subsequent damage to the walls is not his responsibility as the landlord gave him permission to install the internet in the unit. The tenant claims this was installed by a professional and was not done in an unsightly manner. The tenant claims that when he got permission from the landlord to install the internet she did not inform him he had to remove the wires at the end of the tenancy and the tenant claims he therefore acted in good faith and with due care. The tenant does not dispute the landlord's claim for cleaning to the sum of \$35.00 and agrees she may retain this from his security deposit.

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The landlord seeks to recover the sum of \$25.00 for the bank charges due to the cheque that was returned by the landlords' bank for May's rent. The landlord also seeks an Order allowing her to keep the tenants security deposit in partial payment of the outstanding rent and damages and seeks to recover the \$50.00 filing fee from the tenant.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords claim for unpaid rent for May, 2010; Section 45(2)(b) of the Act states: a tenant may end a fixed term tenancy by giving the landlord notice to end tenancy effective on a date that is not earlier then the date specified I the tenancy agreement as the end of the tenancy. The tenant argues that he gave the landlord one months notice to end the tenancy and agreed that he would find another tenant to rent the unit. The tenant also argues that when he did find another tenant the landlord changed her mind about renting the unit again and therefore did not mitigate her loss for the rent for May, 2010.

However, I find that this was a fixed term tenancy and therefore the responsibility for rent till the end of the fixed term lies with the tenant. Although a landlord must show how she has mitigated her loses she is not obligated to rent the unit for a period after the end of the fixed term and the tenant agrees that the prospective tenant was not going to just rent the unit for the month of May. While I Agree that the tenant took steps to help mitigate the loss of rent for May, 2010 I also find due to the remaining one month for the term of the tenancy that the landlord was not obliged to agree to rent the unit to a new tenant if they wanted to extend the length of the tenancy beyond the month of May, 2010. Consequently, the responsibility for the rent for May, 2010 remains with the

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tenant and I find that the landlord has established her claim for unpaid rent for May, 2010 to the sum of **\$2,500.00**.

With regards to the landlords claim for \$25.00 to recover bank charges incurred due to the returned cheque for May, 2010. I have reviewed the tenancy agreement and find the landlord did not include in the agreement that she would charge the tenant a fee for any returned cheques. Consequently, I find the landlord is not entitled to recover this amount from the tenant.

With regard to the landlords claim for damages to the rental unit, I find from the evidence presented that the wiring for the tenants' internet remained in place after the end of the tenancy and was not removed by the tenant. The tenant has provided no evidence to show that the landlord agreed he could install this wiring around the unit and I find the amount of wires left to be excessive. I also find the positioning of the wires to have caused damage to the walls of the rental unit and that this damage was repaired by the landlord. Consequently, I find the landlord has established her claim for damages to the sum of **\$358.40**.

With regards to the landlords claim for cleaning as the tenant does not dispute the amount claimed by the landlord and agreed she could keep a portion of his security deposit to cover cleaning I find the landlord has established her claim for **\$35.00**.

I Order the landlord to keep the tenants security deposit of **\$1,250.00** pursuant to section 38(4)(b) of the Act in partial satisfaction of her claim.

As the landlord has been largely successful with her claim I find she is also entitled to recover her **50.00** filing fee from the tenant. A Monetary Order has been issued to the landlord pursuant to section 67 and 72(1) of the Act.

Unpaid rent for May, 2010	\$2,500.00
Subtotal	\$2,893.40
Plus filing fee	\$50.00
Less security deposit	(-\$1,250.00)
Total amount due to the landlord	\$1,693.40

Conclusion

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 **\$1,693.40**. 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: October 04, 2010.

Dispute Resolution Officer