



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the landlord for a monetary order for damage to the rental; unit, for unpaid rent, for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order to keep the tenants security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the tenant on April 23, 2010. The tenant confirmed receipt of this. The first hearing was adjourned to allow both Parties to send their evidence to the other Party. The landlord sent the tenant his evidence however the tenants claim they gave their evidence to a person at the immigration services to send to the landlord. The landlord states he did not receive this evidence and the tenant has provided no proof to show this was sent to the landlord. If a Party wishes to rely on documentary evidence they must provide proof that this was given to the other Party before the hearing so that Party has opportunity to dispute any of the evidence received. Therefore, the tenants' documentary evidence has not been considered for this hearing.

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:
 - a) Damages to the rental unit?



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- b) Unpaid rent?
- c) Money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both Parties agree that this tenancy started on October 01, 2009. This was a fixed term tenancy for six months. Rent for this unit was \$1,600.00 per month and was due on the 31st of each month in advance. The tenant paid a security deposit of \$800.00 on September 30, 2009.

The landlord testifies that the tenants did not leave the rental unit at the end of the fixed term. He states he went to the unit on the last day of the tenancy and the tenants were still living there. He claims the tenant told him she would not be paying rent for April, 2010. The landlord states a meeting took place between the tenant, a person from Immigration Service's, who had arranged the rental for the tenant, and the landlord. At this meeting the tenant agreed she would move out on April 10, 2010.

The landlord states the tenant did not pay rent for April, 2010 and a 10 Day Notice was served to the tenant on April 01, 2010. This Notice states that the tenants must either pay the outstanding rent of \$1,600.00 due on March 31, 2010 or the tenancy will end on April 11, 2010.

The landlord states the tenant moved out on April 10, 2010 and returned to remove the rest of her belongings and garbage on April 11, 2010. The landlord states he seeks to recover rent for April, 2010 to the sum of \$1,600.00 as the tenant did not give him written Notice to end the tenancy; she overheld at the end of the fixed term and did not pay the rent after the 10 Day Notice was served upon her.

The landlord states at the beginning of the tenancy he did a walk through with a person from Immigration Services but did not document the condition of the unit as he claims if the unit was unclean or in need of repair she would not have rented it for the tenant. At the end of the tenancy the landlord did a move out inspection and documented his findings. The landlord

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states the tenant did not clean the carpets and these were left dirty and stained. The landlord hired a carpet cleaning machine and cleaned the carpets himself at a total cost of \$200.00 (\$87.77 for the machine and shampoo and \$112.23 labour costs). The landlord states the tenant had placed hot dishes or pots on the vinyl kitchen flooring and caused damage to this. He states the flooring was four to five years old and this had to be replaced at a cost of \$320.36 (\$170.36 for materials and \$150.00 labour). The landlord states the tenant was given three keys at the start of her tenancy for each of the doors to the unit. At the end of the tenancy only one key was returned and two of the locks had to be replaced at a cost of \$83.70. The landlords agent testifies that at the start of the tenancy he gave the tenant the three keys and had to go back on two occasions to show her how to operate the locks.

The landlord testifies that the tenant did not clean the rental unit or appliances at the end of the tenancy. He states this is a two story house which he had to clean and seeks to recover the sum of \$200.00 for this cleaning.

The landlord seeks to keep the tenants security deposit of \$800.00 towards the outstanding rent and to recover his \$50.00 filing fee paid for this application.

The tenant states that she did not pay rent for April as the agreement ended on March 31, 2010.

The tenant testifies that when they moved into the unit the carpets were very old and dirty and the house smelt badly. The tenant states she contacted immigration services and was told she must contact the landlord herself about these issues. The tenant claims the landlord came around with his wife and she showed him the condition of the carpets but he did not do anything about them. The tenant states they also had a problem with mice and bedbugs. The landlord was notified and brought some mice bait to go down.

The tenant states she was responsible for putting hotpots on the kitchen floor and states she offered to fix this but the landlord did not tell her how much it was going to be. The tenant also states she did clean the unit at the end of the tenancy. She states they removed her belongings outside the unit and then went back in to clean it. The tenant disputes the landlords and his

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agents' testimony that she was given three keys to the unit and states she returned the key she was given.

Analysis

I have carefully considered all the acceptable evidence before me, including the affirmed evidence of both parties and witness. With regard to the landlords claim for rent for April, 2010; The Residential Tenancy Branch Policy Guideline #3 – Claims for Rent and Damages for Loss of Rent states that a landlord may elect to end a tenancy and sue the tenant for loss of rent. The damages to which a landlord is entitled is an amount sufficient to compensate the landlord for any loss of rent up to the earliest time the tenant could have legally ended the tenancy. As the tenancy was a fixed term tenancy which was due to end on March 31, 2010 I find the tenant overheld her tenancy at the end of the fixed term until April 10, 2010. Consequently, the earliest the tenants could have ended the tenancy would have been April 30, 2010. As a result, the landlords are entitled to recover loss of rental income for April, 2010 as he was unable to re-rent the unit until May 28, 2010. Therefore, I find in favor of the landlords claim for unpaid rent for April, 2010 to the sum of **\$1,600.00** pursuant to s.67 of the *Act*.

With regards to the landlords claim for damage to the rental unit; the landlord argues the tenant left the carpets in a dirty and stained condition; she caused damage to the vinyl flooring, and did not clean the unit at the end of the tenancy. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that the tenant did not clean the carpets or the unit at the end of the tenancy and caused damage to the vinyl flooring. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence such as a move in condition inspection report showing the condition of the carpets and unit at the start of the tenancy or photographic evidence, I find that the landlord has not provided sufficient evidence to show that the tenant did not clean the carpets or the unit at the end of the tenancy and as a result, this section of the landlords claim is dismissed.

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However, the tenant has agreed that she did cause damage to the vinyl flooring in the kitchen and as such I have considered this damage claim. The landlord states the flooring was four or five years old. Generally the life of vinyl flooring is 10 years therefore I have reduced the landlords claim for materials by 50% to the sum of \$85.18 and find he is entitled to recover the his full labour costs to the sum of \$150.00 to a total sum for the flooring of **\$235.18** pursuant to s.67 of the *Act*.

With regard to the landlords claim for new locks; I find from the landlords evidence and the evidence of his witness that it would be likely that the tenants were given three keys to the rental unit at the start of the tenancy and only one key was returned at the end of the tenancy. Consequently, I find in favour of the landlords claim for the sum of **\$83.70** for two replacement locks pursuant to s.67 of the *Act*.

I Order the landlord to keep the tenants security deposit of **\$800.00** in partial; satisfaction of his claim for unpaid rent pursuant to s. 38(4)(b) of the *Act*.

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

Unpaid rent for April, 2010	\$1,600.00
Costs for new locks	\$83.70
Subtotal	\$1,918.88
Plus filing fee	\$50.00
Less security deposit	(-\$800.00)
Total amount due to the landlord	\$1,168.88

Conclusion



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I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,168.88**. 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 15, 2010.

Dispute Resolution Officer