



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for unpaid rent, for damage to the unit, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenant.

The Landlord testified that service of the hearing documents was done in accordance with section 89 of the *Act*, served by registered mail to the Tenant on August 26, 2010 and the Tenant acknowledged receipt of the hearing package.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order under sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

This tenancy began on February 15, 2008, with the parties entering into a written tenancy agreement, on a month to month basis. The monthly rent was set at \$1,250.00, payable on the first day of the month. I note that the Landlord does not hold a security deposit and there was conflicting testimony about the amount of \$600.00 paid prior to the tenancy, with the Landlord stating that the fund was to cover two weeks prior to the start date of the tenancy and the Tenant denying the statement. The Landlord is claiming recovery of this amount.

The Landlord testified and supplied photos of damage to and of the unclean state of the rental unit and receipts for the repair, clean and for the replacement of various items. The Landlord testified and supplied documentary evidence that her expenses included a fireplace clean, carpet cleaning and repair, excessive nail hole wall repair, damage to

the kitchen counter top, miscellaneous charges and two days of cleaning to bring the rental unit into a state fit to be re-rented.

The Landlord testified that the Tenant gave a notice of his intent to vacate in April 2010, and moved out in May 2010, without giving one month's notice, causing her to lose one month's rent.

The Tenant testified that he cleaned the carpets by renting a steam cleaner every three months. When queried, he had no specific dates of the rental nor could provide any receipts. The Tenant further stated that the carpet was already stained and damaged when he moved in.

The Tenant denied putting over 500 holes in the wall and stated that any holes were for pictures and his son's posters.

When queried, the Tenant admitted using the fireplace during the tenancy, did not deny not cleaning the fireplace at the end of the tenancy and denied damaging the rental unit. The Tenant also admitted the oven was not so clean when he left.

Analysis

Based on the testimony, evidence, photographs and a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, based on a balance of probabilities.

To prove a loss and have the Tenant pay for the loss requires the Landlord in this case to prove four different elements:

First, proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In regards to the Landlord's right to claim damages from the Tenant, Section 7 of the Act states that if the landlord or tenant does not comply with this Act, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

In weighing the evidence, I prefer the evidence and testimony of the Landlord over that of the Tenant, as I find the Tenant's evidence and testimony lacked credibility. I find the Landlord provided evidence of the damage and loss to the rental unit. I find that the

Landlord was quite reasonable in her costs claimed against the Tenant and has mitigated her loss as much as possible.

Claim for lost rent. The Landlord claims for lost rent of \$1,250.00 for May 2010, pursuant to section 45 (1) of the *Act* which stipulates a tenant may end a periodic tenancy by giving notice in the proper manner. I find that the Tenant failed to give notice which is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. I find that the Landlord has proven the test for loss as listed above and I hereby approve her claim for lost rent of \$1,250.00.

Cleaning- The Landlord claims 24 hours for cleaning the rental unit at \$10.00 per hour. Based on the evidence and testimony before me I find that the Landlord has proven the test for damage and loss and I hereby approve her claim in the amount of \$240.00.

Wall Repairs – The Landlord has claimed \$473.94 for labour and painting the damaged walls. The evidence supports that there was damage to the walls and RTB Guidelines state that a Tenant must pay for repairing walls with an excessive number of nail holes. I find that the Landlord has proven the test for damage and loss and I hereby approve her claim in the amount of \$473.94.

Damaged Counter Top – The evidence and testimony supports the Landlord's claim that the counter top was damaged and had to be repaired at a cost of \$120.00. I find that the Landlord has proven her claim for damage and I approve her claim in the amount of \$120.00.

Carpet Clean and Repair- The evidence supports the Landlord's claim that the carpet required cleaning and repair for damage caused by damage by the Tenant. I find that the Landlord has proven her claim for damage and I approve her claim in the amount of \$429.14.

Chimney/Fireplace Clean-The evidence supports the Landlord's claim that the Tenant did not clean the fireplace at all during or at the end of the tenancy. I find that the Landlord has proven her claim for cleaning and I approve her claim in the amount of \$157.40.

Miscellaneous Charges- The evidence supports the Landlord's claim that she incurred miscellaneous charges caused by the Tenant. I find that the Landlord has proven her claim for removed smoke detector batteries, extractor fan filter, cleaning products, removed fold-up bed, removed shower curtain and removed original fireplace set and I approve her claim in the amount of \$159.00.

Unpaid Utilities-I do not find the evidence supports the Landlord's claim that the Tenant owes unpaid utilities and I dismiss her claim for \$73.83.

Unpaid Rent-I do not find the evidence supports the Landlord's claim that she be paid for two weeks of unpaid rent prior to the official start date of the tenancy and I dismiss her claim for \$600.00.

Filing Fee \$50.00 - I find that the Landlord has succeeded in large and that she should recover the filing fee from the Tenant.

Monetary Order – I find that the Landlord has established a monetary claim and is entitled to a monetary order as follows:

Lost rent for May 2010	\$1,250.00
Cleaning	\$240.00
Wall repair	\$473.94
Damaged Counter Top	\$120.00
Carpet Clean and Repair	\$429.14
Chimney/Fireplace Clean	\$157.40
Miscellaneous Charges	\$159.00
Filing Fee	\$50.00
TOTAL Monetary Order In Favour Of The Landlord	\$2,879.48

The Landlord is hereby granted a monetary Order in the amount of **\$2,879.48**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

Pursuant to Section 67 of the Act, the Landlord is granted a monetary Order for \$2,879.48.

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 25, 2010.

Dispute Resolution Officer