



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

MNR, MNSD, MNDC, FF

### **Introduction**

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* for Orders as follows:

1. A Monetary Order for unpaid rent of \$750 - Section 67;
2. A Monetary Order for damage or loss of \$150 – Section 67
3. An Order to recover the filing fee of \$50 for this application - Section 72.

Both parties attended the hearing and were given a full opportunity to present evidence and make submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The landlord provided the hearing with evidence not previously submitted which was viewed and accepted by the respondent.

### **Issue(s) to be Decided**

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The tenancy began on July 01, 2009 as a fixed term tenancy agreement ending July 01, 2010. The tenant vacated June 12, 2010. Rent was payable in the amount of \$1500 per month payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$750 which the landlord still retains. The tenant failed to pay all the rent in the last month of the tenancy. The tenant told the landlord to retain their security deposit of \$750 in lieu of rent for the first half of the month of July, with the agreed goal of the parties that the landlord would try to rent the suite for July 15, 2010 to a new tenant acceptable to the landlord. There is no dispute that despite the tenant's efforts to secure a new tenant for

July 15 and despite the landlord's good faith intent to accommodate the efforts and plan of the tenant, the landlord did not secure an acceptable new tenancy agreement for July 15, 2010. The tenant provided a witness. Under affirmation of testimony, the witness stated she overheard the landlord showing the suite to a prospective tenant and heard the landlord ask the respondent tenant if July 15<sup>th</sup> was "ok". The tenant testified they made a strong effort to accommodate a new tenancy. The landlord testified that in their determination the prospective tenant was not suitable. The landlord claims the balance for the last month's rent in the amount of \$750.

The landlord provided a copy of the tenancy agreement and the tenant's Notice to End. The tenant provided photographs of the carpet cleaning upon vacating as well as of the purported wall damage.

The landlord is claiming \$100 for professional carpet cleaning. The parties agree that the tenant cleaned the carpet; however, the landlord determined the tenant's carpet cleaning was not to a "professional" standard, and, had a carpet cleaning contractor redo the carpet cleaning.

The landlord is claiming \$50 for remediation of a panel wall. The parties agree that several small holes in the wall were partly repaired by the tenant, but required paint to complete the repair. The amount claimed is for paint and labour to fully remediate the wall. The tenant testified the landlord's claim is not reasonable as, had the tenant been provided with the paint colour, they would have completed the repair.

The quantum of the landlord's monetary claim is for \$900.

### **Analysis**

Based on the testimony of both parties, on preponderance of the evidence in this matter, and on the balance of probabilities, I find that despite whatever verbal agreement existed between the parties, or what good intentions or good faith was inferred or implied by their verbal agreement, the intended goal of the parties was not realized to the satisfaction of either party – but, none the less, the tenant remains contractually obligated to satisfy the full payment of rent to the end of the fixed term lease. Section 26 of the Residential Tenancy Act (the Act) in part states as follows:

#### **Rules about payment and non-payment of rent**

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As a result, I find the landlord has established an entitlement to unpaid rent in the amount of **\$750**.

I find that the landlord's tenancy agreement does not articulate the standard to which the carpets are to be cleaned at the end of the tenancy. On the face of the evidence, I find the tenant reasonably satisfied the requirement of the Tenancy Agreement to "shampoo" the carpets upon completion of the tenancy. As a result, **I dismiss** the landlord's claim for carpet cleaning without leave to reapply.

I find that the tenant's good intention to complete the repairs to the wall holes does not amount to completion of the repairs, and that at the end of the tenancy the repairs remained wanting and were completed by the landlord. The burden of establishing the cost of the repairs rests with the applicant landlord, and in this matter, the landlord did not provide proof that a cost to them was incurred – but I am satisfied that a cost was incurred, none the less. I grant the landlord a nominal amount of **\$20** for wall repairs.

As the landlord was mostly successful in their application, I grant the landlord recovery of the filing fee in the amount of **\$50**, for a total entitlement of **\$820**.

### **Conclusion**

**I grant** the landlord an Order under Section 67 of the Act for the sum of **\$820**. If necessary, this order may be filed in the Small Claims Court and enforced 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*.