

## **DECISION**

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

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of cleaning, repair to the rental unit, loss of income for May and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her 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 all or a portion of the above? Is the landlord entitled to retain the security deposit and to recover the filing fee?

### **Background and Evidence**

The tenancy started on October 01, 2009. Rent was set at \$1,500.00 per month. The tenant paid a security deposit in the amount of \$750.00. The unit was brand new when the tenant moved in.

The landlord stated that on May 03, he received a phone call from the tenant. The tenant informed him that he had already moved out. The tenant stated that about three weeks prior to the date he moved out, he had had a conversation with the landlord regarding moving out. The landlord was agreeable as moving out would benefit the tenant financially and would be convenient in terms of proximity to his children's school.

The tenant agreed that he did not give the landlord written notice to end the tenancy and moved out on May 03, 2010. However, the tenant also agreed to cover rent for the month of May and to allow the landlord to retain the security deposit towards the loss of income he would incur for May, if he did not find a tenant.

The landlord advertised the availability of the unit but was unsuccessful in finding a tenant for May. Therefore the landlord is claiming \$1,500.00 for the loss of income that he incurred.

The tenant stated that he and his spouse cleaned the unit thoroughly prior to moving out. The walls were not painted and had a coat of builder's primer on. The landlord confirmed that the coat on the wall would come off when a damp rag was used on it. In addition the tenant stated that the wooden flooring was very soft and would scratch easily. He stated that he found this out on the first day of tenancy when his keys fell on the wooden floor and left a mark. The tenant stated that he took a lot of trouble to ensure that the floor did not get damaged and used a remedial pen on scratches.

The landlord stated that the unit was not clean, the walls had marks on them and the wooden floor was scratched in several places. He stated that his spouse used some floor oil to refinish the hardwood. The landlord is claiming \$1,160.00 towards time (58 hours) spent cleaning, painting and refinishing the hardwood. The landlord is also claiming \$216.83 for paint supplies and has filed an invoice to support his claim.

Both parties made an agreement to meet in the lobby of the apartment building on May 06, 2010, to hand over keys. The tenant stated that he offered to do a move out inspection but the landlord refused. The landlord stated that he asked the tenant to go up to the suite and the tenant refused. In the end, the tenant handed over the keys, told the landlord that the unit was in perfect condition and left.

The landlord had the contact information of the tenant but did not contact the tenant to inform him that the unit was in need of cleaning and repairs. The tenant first heard of it when he received the landlord's application for dispute resolution along with the notice of hearing.

The landlord is also claiming \$27.85 for hydro for the period of May 12 to May 24, 2010 and the filing fee of \$50.00.

### **Analysis**

The tenant moved out without giving the landlord written notice, thereby causing the landlord to incur a loss of income for May. The tenant agreed that he would cover rent for May if the landlord did not find a tenant for May. Accordingly, I find that the landlord has established a claim for \$1,500.00.

The testimony of the tenant and the landlord is conflicting with regard to the move out inspection. 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 move out inspection is an opportunity for the tenant and landlord to identify damage and come to an agreement on any deductions that can be made to the security deposit. The inspection should be conducted diligently as it is the only opportunity to identify damage that the tenant is responsible for.

Based on the testimony of both parties, I find that the landlord did not make efforts to schedule a move out inspection nor did he inform the tenant of the damage that he is claiming compensation for. If the unit was in need of cleaning, the landlord should have notified the tenant and given him the opportunity to clean. In addition, the landlord agreed that the walls were not painted adequately prior to the tenant moving in. The hardwood floors were refinished with an application of floor oil thereby implying that there was minimum damage which was not caused by negligence or intent on the part of the tenant.

Based on the sworn testimony of both parties, I find that the landlord has not established a claim for cleaning, painting or refinishing the hardwood floors. The utility bill is for usage after the tenant had moved out and therefore I find that the landlord is not entitled to \$27.85 that he is claiming for utilities.

The landlord has established a claim of \$1,500.00 out of his total claim of \$2,954.68. Therefore I will award the landlord a portion of the filing fee in the amount of \$25.00.

Overall the landlord has established a claim of \$1,525.00. I order that the landlord retain the security deposit of \$750.00 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 \$775.00. 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 in the amount of **\$775.00**.

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: October 29, 2010.

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Dispute Resolution Officer