



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

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 June 11, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents on June 16, 2010, the fifth day after they were mailed as per section 90(a) of the Act.

The Landlord and his Agent appeared at the in person hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one attended on behalf of the Tenant despite her being served notice of today's hearing in accordance with the Act.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order?

Background and Evidence

At the onset of the hearing the Landlord requested to submit additional documentary evidence. He confirmed that he has not served the Tenant with the additional evidence prior to the hearing. In the absence of the Tenant I declined to accept the Landlord's additional evidence. I told the Landlord that I would accept testimony to this new evidence.

The parties entered into a fixed term tenancy agreement effective July 15, 2009 which was set to expire on July 31, 2010 when the Tenant was required to vacate the rental unit. The Tenant ended the tenancy early and vacated the unit on May 31, 2010. Rent

was payable on the first of each month in the amount of \$1,550.00. The Tenant paid a security deposit of \$775.00 and a pet deposit of \$775.00 on July 28, 2009. The move in inspection was conducted on July 17, 2009 and the move out inspection was completed May 31, 2010.

The Landlord requested to reduce his claim stating that his cost to re-rent the unit was lower than the liquidated damages and he was able to re-rent the unit effective July 16, 2010 so his loss of rent was for only one and one half of a month and not two full months. He testified that he is withdrawing his request to claim \$775.00 in liquidated damages and he is now seeking \$154.59 as costs to re-rent the unit (\$137.50 for newspaper advertising + \$9.63 postage + \$7.46 photocopies) and \$2,325.00 as loss of rent which is comprised of a full month's rent for June 2010 (\$1,550.00) and one half of a month's rent for July 2010 (\$775.00).

The Landlord testified that everything was satisfactory as noted on the move-out inspection report form and confirmed that the Tenant provided him with the original receipts for carpet cleaning of the rental unit at the end of the tenancy (May 31, 2010). However, a few weeks after he continued to show the rental unit the Landlord states that he noticed there were fleas in the basement carpet. The Landlord stated he had to replace the carpet and that it was cheaper for him to install laminate flooring instead of replacing the carpet. He installed the laminate on June 30, 2010 and is seeking \$316.22 for the cost of the product and the tools to install it. The Landlord could not say exactly how old the existing carpet was.

Analysis

The Landlord confirmed that he did not provide the Tenant with copies of the additional evidence he wanted to provide at the onset of the hearing. Not providing evidence to the respondent is a contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the respondent Tenant has not received copies of the Landlord's additional evidence I find that the additional evidence cannot be considered in my decision pursuant to section 11.5 (b) of the *Residential Tenancy Branch Rules of Procedure*. I did however consider the Landlord's testimony relating to this additional evidence.

The Landlord testified that the Tenant had been served copies of his original documentary evidence which included among other things: a copy of the Notice of Dispute Resolution, a copy of the tenancy agreement, a copy of the move-in and move-out inspection form, a copy of the Tenant's notice to end tenancy, and a copy of a 10

Day Notice to End Tenancy. Based on the aforementioned I considered this original evidence in my decision.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 45 of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. In this case the Tenant could not end the tenancy prior to July 31, 2010 and is therefore responsible for the rent until either the end date of the fixed term or until the Landlord has entered into a tenancy agreement with another tenant. The evidence supports the Landlord re-rented the unit effective July 16, 2010. Based on the aforementioned I find the Landlord has proven the test for damage or loss as listed above and I approve his claim for loss of rent of \$2,325.00.

Section 5 of the tenancy agreement provides the Landlord may claim liquidated damages for the costs incurred to re-rent the unit if the Tenant causes an end to the tenancy prior to the end of the fixed term. The evidence supports the Tenant breached the fixed term of the tenancy agreement by ending the tenancy May 31, 2010 instead of at the end of the fixed term which was July 31, 2010. The Landlord has proven that he suffered a loss of \$154.59 (\$137.50 + \$9.63 + \$7.46) to re-rent the unit. Based on the aforementioned I find the Landlord has proven the test for damage or loss as listed above and I hereby approve his claim of \$154.59.

The Landlord is seeking \$316.22 to remove carpet that he alleges had fleas which he replaced with laminate flooring June 30, 2010. The evidence which included a copy of

the move-out inspection report and the professional carpet cleaning receipt, for cleaning which was completed May 31, 2010, indicates the carpet was in clean and satisfactory condition. Given the ability of fleas to jump from one article to another and to travel with unsuspecting hosts, I cannot determine with any certainty whether the fleas were resident in the rental unit at the end of the tenancy or if they were brought into the unit by a potential tenant who viewed the unit after the tenancy ended. That being said there is insufficient evidence to support that the Landlord was required to remove and discard the carpet instead of hiring a pest control company to come in and treat the carpet to remediate the fleas at a much lesser expense. Based on the aforementioned I find there is insufficient evidence to support the Landlord's claim; therefore I dismiss his request for \$316.22.

The Landlord has been partially successful with his application, therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Loss of Rent for June 2010 (\$1,550.00) + ½ of July 2010 (\$775.00)	\$2,325.00
Costs incurred to re-rent the unit	\$154.59
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$2,529.59
Less Security Deposit of \$775.00 plus Pet Deposit of \$775.00 plus interest of \$0.00	-1,550.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$979.59

Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$979.59**. The order must be served on the respondent Tenant 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: November 12, 2010.

Dispute Resolution Officer