



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent, for damages to the unit, site or property and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. The landlord also seeks an Order to keep all or part of the security deposit and to recover the cost of the filing fee. At the outset of the hearing the landlord stated the tenants have moved from the rental unit and therefore she withdraws her application for an Order of Possession.

Service of the hearing documents, by the landlord to one of the tenants (JP), was done in accordance with section 89 of the *Act*, sent via registered mail on October 27, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on November 01, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*. The Other Party (SV) was not a tenant at the rental unit but was an occupant. He was not served with the hearing documents and pursuant to section 13 of the Residential Tenancy Policy Guidelines he has no rights or obligations under the tenancy agreement.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for :
 - a) Unpaid rent?
 - b) For damage to the unit site or property?
 - c) For money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

The landlord testifies that this tenancy started on July 01, 2010. A tenancy agreement was in place for one tenant (JP). This tenant allowed two occupants to share the rental unit with him and share the rent and expenses. Rent for this unit was \$1,000.00 per month and was due on the first day of each month. The tenants' share of utilities was two thirds of the bills. The tenant paid a security deposit of \$500.00 on July 28, 2010.

The landlord testifies that the tenant gave her a check on September 15, 2010 for the balance of rent owed for September. This rent cheque was returned as there were insufficient funds available (NSF). The landlord states she served the tenant with a 10 Day Notice to End Tenancy on October 06, 2010 by handing it to one of the occupants in the rental unit. This Notice Indicates that the tenant had five days to pay the sum of \$333.00 or dispute the notice or the tenancy would end on October 17, 2010. The landlord states that the tenant gave her another rent check for \$1,000.00 for Octobers rent on October 01, 2010. This was also returned by the bank after the 10 Day Notice was issued. The landlord states the tenant gave her a cheque for \$127.88 for his share of utilities and this cheque was also returned by the bank.

The landlord testifies that the tenant and one occupant moved from the rental unit on October 18, 2010. She states the other occupant said he would move out and clean the rental unit by October 31, 2010 however he did not move out until November 04, 2010. The landlord seeks to recover the balance of unpaid rent for September of \$333.00 and unpaid rent for October of \$1,000.00. As the occupant did not vacate the rental unit until November 04, 2010 the landlord



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also seeks to recover rent for November of \$1,000.00. The landlord states she had two prospective tenants ready to move into the rental unit in November, 2010 but she lost these tenants as the occupant had not moved out. The landlord states she has now re-rented the unit for December 01, 2010. The landlord served the tenant with her amended claim for rent for November.

The landlord seeks to recover the sum of \$348.49 for the tenants' unpaid share of utilities. The landlord has provided the City utility bills showing the total amount of the bill and the tenants' two thirds share of this. The landlord also seeks to recover unpaid utilities for November, 2010 to the sum of \$250.00 but has not received the bill from the City for this billing period yet.

The landlord testifies that the tenant did not attend the move out condition inspection. She states she gave him four opportunities to attend on October 18, 21, 27 and November 08, 2010. The landlord states she did the move out inspection in the tenants' absence. This inspection highlighted that the tenants did not clean the rental unit or maintain and clean the yard. The landlord seeks to recover her cleaning and yard maintenance costs for six hours cleaning at \$25.00 per hour. The landlord has provided a copy of the inspection reports and photographic evidence showing the condition the unit and yard were left in. The landlord states there is still some work that is required in the unit such as painting to repair damage done to the wall where the tenant hung a television. The wall will need to be filled, sanded and repainted. The landlord has also applied for carpet cleaning costs but has been unable to do this work until the walls have been painted.

The landlord seeks to recover the sum of \$75.00 for a missing set of fireplace tools and \$40.00 for a solar light. The landlord has provided no evidence in relation to this section of her claim. The landlord seeks to recover the sum of \$120.00 for the three returned cheques. The landlord states her bank did not charge her to return these cheques but she has a clause in her tenancy agreement which states she will charge the tenant \$40.00 for returned cheques.



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The landlord states she had a discussion with the tenant and his occupiers that the tenant would be responsible for all costs associated with this tenancy as the other parties living in the unit were occupiers and not tenants. The landlord states the tenant understood this.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

Section 13 of the Residential Tenancy Policy Guidelines states where a tenant allows a person who is not a tenant to move into the premises and share rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant. As the Parties did not enter into an agreement to include the other occupants as tenants, it is my decision that the tenant named on the tenancy agreement is responsible for any unpaid rent or damages to the rental unit.

Consequently, I find the landlord is entitled to recover the unpaid rent for September and October, 2010 from the tenant. I further find as the occupant remained living in the unit after the tenant had vacated the unit the landlord was unable to re-rent the unit for November, 2010 and the tenant would continue to be responsible for this rent. Therefore, I find the landlord has established her claim for unpaid rent to the sum of **\$2,333.00** pursuant to section 26 of the *Act*.

With regard to the landlords claim for unpaid utilities; the landlord has provided copies of the outstanding utility bills for July to August, 2010 of \$127.88, August to September, 2010 of \$109.05 and indicated that the bill for September to October, 2010 was \$111.56. The landlord also seeks to recover an estimated amount for the utility bill from October to November, 2010 of \$250.00. I will allow the landlords claim for unpaid utilities for the months from July to October to a total sum of **\$348.49**. However as the landlord has not yet received the bill from October to November I decline to award her estimated amount and dismiss this section with leave to reapply. The landlord must provide a copy of the bill to the tenants and the tenant have thirty days to settle that account with the landlord.

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With regard to the landlords claim for \$120.00 for NSF fees. The landlord agrees that she did not suffer any loss when the bank returned these cheques to her and as no loss was suffered due to these returned cheques I dismiss this section of the landlords claim.

With regard to the landlords claim for cleaning and yard maintenance; I find the tenant is responsible to ensure the rental unit is left in a reasonable states of cleanliness at the end of a tenancy pursuant to s. 32 of the Act. The landlord has provided a copy of the move in and move out condition inspection reports and photographic evidence which indicate that cleaning was not done to a reasonably standard at the end of the tenancy and the tenant had not maintained the yard. Consequently, I find the landlord is entitled to recover **\$150.00** in cleaning costs for her time of six hours spent cleaning the unit and cleaning and maintaining the lawn and flower beds.

With regard to the landlords claim for painting and carpet cleaning, as this work has not yet been carried out it is my decision that the landlord is entitled file a new application if she chooses to make a claim for these costs once she has determined what costs she will incur.

The landlord has also applied to recover the replacement costs for missing fire place tools and solar lights. When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find that the landlord has not established her claim in this matter and has not submitted any evidence to support her claim of \$115.00 for the fire place tools or solar lights. Therefore this section of her claim is dismissed.

The landlord has established her claim to keep the tenants security deposit pursuant to section 38 of the *Act*. Therefore, I Order the landlord to keep the security deposit of **\$500.00** in partial satisfaction of her monetary claim pursuant to section 38(4)(b) of the *Act*.



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As the landlord has been partially successful with her claim I find she is entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*. A Monetary Order has been issued pursuant to section 67 and 72(1) of the *Act* for the following amount:

Unpaid rent	\$2,333.00
cleaning	\$150.00
Subtotal	\$2,831.49
Plus filing fee	\$50.00
Less security deposit	(-\$500.00)
Total amount due to the Landlord	\$2,381.49

Conclusion

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 \$2,381.49. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlords' application for unpaid utilities from October to November and her claim for painting and carpet cleaning are dismissed with leave to reapply.

The landlords claim for a Monetary Order for the cost of fire place tools, solar lights and NSF fees are dismissed without leave to reapply.

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 23, 2010.

Dispute Resolution Officer