



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes Landlord MNR, MNSD, MNDC, FF
Tenant MNSD

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for unpaid rent and utilities, compensation for damage or loss under the act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of her security deposit. The Tenant did not attend the hearing and in the absence of any evidence from the Tenant to support her application, it is dismissed without leave to reapply.

Service of the hearing documents by the Landlord to the Tenant was done by registered mail on November 4, 2010, in accordance with section 89 of the Act.

The Landlord confirmed that she received the Tenant's hearing package.

Issues to be Decided

Landlord:

1. Are there rent and utility arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and utilities and if so how much?
3. Is there damage or loss to the unit and if so how much?
4. Is the Landlord entitled to compensation for damage of loss to the unit?
5. Is the Landlord entitled to retain the Tenant's security deposit?

Background and Evidence

This tenancy started on July 1, 2009 as a month to month tenancy. Rent was \$1,250.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$625.00 on June 19, 2009. The tenant gave the Landlord written notice to end the tenancy on April 1, 2010 for April 30, 2010. The Tenancy was to end on April

30, 2010, but the Landlord said the Tenant did not move out until May 2, 2010. The Landlord submitted a utility bill that shows the Tenant cancelled her account with the utilities on May 2, 2010.

The Landlord said that she contacted the Tenant to do a move out inspection but the Tenant did not participate. The Landlord said the unit had been renovated just prior to the Tenant moving in so there was no move in inspection report done. The Landlord said she spoke with the Tenant on the phone regarding the security deposit and they agreed that the Landlord could use it to repair the ceiling from the damage caused by the Tenant's pole dancing which damaged the ceiling. The Landlord submitted a receipt for \$526.00 for repairs to the ceiling. As well the Landlord said the Tenant agreed to pay \$84.00 for the extra two days rent for May 1 and 2, 2010 and to pay the outstanding utilities of \$35.52. The Landlord said her total claim is for \$526.00 (ceiling repairs) + \$84.00 unpaid rent + \$35.52 for unpaid utilities; totally \$645.52. As well the Landlord said she would like to recover the filing fee for this proceeding of \$50.00.

Towards the end of the conference call the Landlord said she would amend her application to retain the security deposit of \$625.00 as full settlement of the damages and money owed to her by the Tenant to settle the dispute more quickly.

Analysis

Section 26 (1) says a tenant **must** pay rent when rent 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.

I find that the Tenant has not paid the overdue rent and does not have an order or the right to withhold the all or a portion of the rent. Consequently, I find that the Landlord is entitled to recover unpaid rent for May 1 and 2, 2010 in the amount of \$1,250.00 / 31 days in May X 2 days = \$80.64.

I also find that the Landlord is entitled to recover the unpaid utilities as indicated on the Utility bill dated August 23, 2010 in the amount of \$35.52.

Section 37 (2) (a) says that when a tenant vacates the rental unit they must leave it clean and undamaged except for reasonable wear and tear.

The Landlord's said in her testimony that the ceiling was damaged due to pole dancing in the unit and the Landlord said the Tenant agreed that the deposit could be used to repair the ceiling. The Landlord submitted a receipt for the ceiling repair in the amount



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

of \$526.00. I find for the Landlord and grant the costs to repair the ceiling of \$526.00 to the Landlord.

As the awarded damages are in the amount of \$642.16 which exceed the security deposit and the Landlord has amended her application to retain the security deposit as full settlement of her claim I order the Landlord to retain the Tenant's security deposit in the amount of \$625.00 as full settlement of the Landlord's claim and application.

Conclusion

The Tenant's application is dismissed without leave to reapply.

I Order the Landlord to retain the Tenant's security deposit in the amount of \$625.00 as full settlement of the Landlord's application.

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*.