

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This is an application by the Landlord for a monetary order for unpaid rent or utilities, to keep all or part of the pet damage deposit or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and the recovery of the filing fee.

Both parties attended the conference call hearing and gave affirmed testimony.

At the beginning of the hearing the Landlord's agent indicated that the application for a monetary order for unpaid rent or utilities was an error and should not have been added.

The Landlord was strictly seeking the costs from the Tenant for breaking the lease agreement and the costs of the carpet and drapery cleaning.

### Issues(s) to be Decided

Is the Landlord entitled to a monetary order for the Tenant breaking the lease agreement and the costs associated with carpet and drapery cleaning?

### Background and Evidence

This tenancy began on October 1, 2009 on a fixed term lease until September 30, 2010 for a 12 month period as shown in the signed tenancy agreement. The monthly rent was \$1,205.00 and was payable on the 1<sup>st</sup> of each month. A security deposit of \$602.50 was paid at the beginning of the tenancy.

The Landlord sent the hearing package and evidence packages to the Tenant by registered mail on December 13, 2010.

The Landlord states that the Tenant broke the lease when they gave notice to vacate the rental unit on June 30, 2010 with a move out date of July 31, 2010. The Tenant vacated the rental unit on July 23, 2010 as indicated on the condition inspection report

for the move-out. The Landlord is seeking liquidated damages of one months rent equalling, \$1,205.00 because he was unable to re-rent the unit until September 1, 2010. The Tenant admits to breaking the lease and confirms that they moved out prior to the end of the lease. The Tenant's feel that they are justified in breaking the lease due to some heat issues in 2009 regarding the rental unit. The Tenant has indicated that they have not filed any applications for dispute resolution regarding the heating.

The Landlord is also seeking costs associated with the cleaning of the carpets and the draperies. The Landlord is seeking \$134.40 for carpet cleaning and \$168.00 for drapery cleaning in their application. The Landlord has provided invoices for the carpet cleaning for \$95.20 and \$122.08 for the cost of drapery cleaning. The Landlord has explained that the difference in pricing is the Landlord's "mark-up" for their administration of the cleaning. The condition inspection report for the move-out portion of the report does not give any indication on the condition of the carpets and drapes. They only display a carpet cleaning cost of \$120.00 plus tax and \$157.50 for the cost of cleaning the drapes. The Landlord points out that the Tenant signed the inspection report agreeing to pay the "total tenant charges" indicated on the report. The Tenant disputes that the charges were not on the report when she signed the report and that she did not receive a copy of it prior to the dispute. The Landlord has provided the witness, A. F, who witnessed the Tenant sign the report after it was completed. The Tenant states that she spent more than 12 hours to clean the rental unit. The Landlord asked the Tenant if she cleaned the carpets and the draperies. The Tenant indicated that she was not aware that she was responsible for cleaning the carpet or draperies as part of her responsibilities and as such did not.

### Analysis

I am satisfied that both parties were properly served with the hearing documents and their respective evidence packages.

The Tenant has admitted to breaking the lease prior to the end of the fixed term. The Landlord has stated that they were unable to re-rent the unit until September 1, 2010. I

find that the Landlord has established a claim for \$1,205.00 as referenced in section 2.10 in the rental agreement.

If the Tenant breaches a material term of this Tenancy Agreement or fails to take possession of the premises or has abandoned or **vacated the premises before the expiry of the tenancy created by this Agreement, the Landlord may treat this Tenancy Agreement as being at an end. In such event, a sum equal to one month's Rent shall be paid by the Tenant to the Landlord as liquidated damages** and not as a penalty to cover the administration costs of re-renting the Premises. Should the suite be immediately re-rented, so that no rental income is lost, the liquidated damages shall be reduced to \$300.00 to cover said costs of administration. The Landlord and the Tenant acknowledge and agree that the payment of the said damages shall not preclude the Landlord from exercising any further right of pursuing another remedy available in law or in equity, including but not limited to damages to the Premises and damages as a result of loss of rental income due to the Tenant's breach of the terms of this Tenancy Agreement.

The Landlord disputes that although the condition inspection report for the move out does not indicate the condition of the carpets and drapes that if the cost amounts were placed on the report that those two services were warranted. The Landlord refers to section 3.02 of the rental agreement.

### 3.02 Security Deposit

The Security Deposit shall secure compliance with the terms and conditions of this agreement and shall be refunded to Tenant within 15(fifteen) days after the premises have been completed vacated, less any amount necessary to pay Landlord: a) any unpaid rent; b) cleaning costs; c) key replacement costs; d) costs for repair of damages to apartment and/or common areas above ordinary wear and tear; and e) any other amount legally allowable under the terms of this agreement. A written accounting of said charges shall be presented to Tenant within fifteen days of move out. If deposits do not cover such costs and

damages, the tenant shall immediately pay additional costs for damages to Landlord.

I find that the Tenant signed the completed condition inspection report after it was completed based upon the testimony of the witness A.F. The Tenant agrees to pay “total tenant charges”. I find that the “mark-up” administration fee set by the Landlord as being unconscionable and is not recoverable. I award the costs of both the carpet and drapery cleaning based upon the invoices submitted. Drapery cleaning costs as indicated on the invoice is for 109 pleats @ \$1.00 per pleat equals to \$109.00 plus the 12% HST is \$122.08. The carpet cleaning costs as indicated in the invoice is \$85.00 plus the 12% HST is \$95.20. The total cleaning costs awarded to the Landlord is \$217.28.

As for the monetary order, I find that the Landlord has established a claim for \$1,205.00 for breaching the lease. The Landlord is entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$602.50 security deposit in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$869.78. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The Landlord is granted a monetary order for \$869.78.

The Landlord may retain the security deposit.

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: December 22, 2010.

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Dispute Resolution Officer