



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

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

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the Act, sent via registered mail on June 21, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant confirmed receipt of the hearing documents and the Landlord's evidence.

The Landlord and Tenant appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Did the Tenants breach the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Landlord proven entitlement to monetary compensation as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement effective December 1, 2009 and was set to switch to a month to month tenancy after November 30, 2010. Rent was payable on the first of each month in the amount of \$1,765.00 and \$882.50 was paid by the Tenants on November 4, 2009 as a security deposit.

The Landlord testified that on May 27, 2010 the Tenants provided him with written notice to end the tenancy effective June 15, 2010. He spoke with the male Tenant on

May 28, 2010 and informed him that a notice to end tenancy must run the full month and therefore the Tenants would be responsible to pay the full rent for the month of June 2010 and the months following until the Landlord was able to re-rent the unit. They had several conversations during the weeks which followed where the Tenant requested to apply the security deposit towards the rent owed for June 2010. He informed the Tenant he could not use the security deposit as rent and later found out that the head office deposited the Tenants' post dated cheque for June 1, 2010 which was subsequently returned due to a stop payment.

The Landlord regained possession of the unit on June 15, 2010 after conducting the move-out inspection with the Tenants. The unit was re-rented July 1, 2010. The Landlord is seeking \$1765.00 for June 2010 rent, \$50.00 for advertising costs to re-rent the unit, \$35.00 for the return cheque fee, \$30.00 to clean the oven, and to recover the \$50.00 filing fee. The Landlord did not submit evidence to support his claim of \$35.00 for return cheque fee or \$50.00 for advertising costs. He advised the Tenant signed the move-out inspection form agreeing to pay \$30.00 to clean the oven.

The Tenant testified and confirmed they provided notice to end tenancy on May 27, 2010 with an effective end date of June 15, 2010. They vacated the unit as of June 15, 2010 and he did agree, in writing on the move-out inspection form to pay \$30.00 to clean the oven.

The Tenant confirmed they have not paid anything towards June 2010 rent however he did offer to provide the Landlord with a cheque for \$882.50 for half of the June rent which the Landlord refused to accept and instead chose to deposit the full rent cheque and incur the cost of the cheque being returned. He pointed out in the Landlord's evidence, exhibit 4, where the Landlord's e-mail confirms they offered him a cheque for \$882.50 and requested the Landlord use their security deposit as the balance of rent due. The Tenant argued they were given advice to end the tenancy mid June 2010 due to their loss of quiet enjoyment.

The Landlord initially stated he did not recall the Tenants offering to pay half of rent and use the security deposit towards the balance and was later reminded of this when the Tenant pointed out this offer in the Landlord's evidence. The Landlord related that the security deposit was to be held for future loss of rent and not to be used for current rent.



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Analysis

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 one month after the date the landlord receives the notice and is not earlier than the date specified in the tenancy agreement as the end of the tenancy. In this case the Tenants would not be able to legally end the tenancy prior to November 30, 2010 by providing the Landlord notice of their intent to end the tenancy no later than October 31, 2010. The Tenants are liable for full rent up until July 1, 2010 which is when the Landlord was able to re-rent the unit and mitigate his loss. Based on the aforementioned I find the Landlord has proven the test for loss, as listed above and I hereby approve their claim of \$1,765.00 for June 2010 rent.

The Landlord is seeking \$35.00 for returned cheque fees however there is no evidence before me to support that is the actual loss suffered by the Landlord nor is there a provision in the tenancy agreement which would allow the Landlord to claim the \$25.00 fee provided for under section 7 of the Regulations. Based on the aforementioned I find the Landlord has provided insufficient evidence to support this claim and it is hereby dismissed.



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There is no evidence before me to support the Landlord suffered a loss of \$50.00 for advertising costs to re-rent the unit. Therefore I dismiss the Landlord's claim.

The Tenant approved the Landlords request for \$30.00 to clean the oven, in writing on the move out inspection report dated June 15, 2010. Therefore I approve the Landlord's request of \$30.00.

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 that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit follows:

Unpaid Rent for June 2010	\$1,765.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,845.00
Less Security Deposit of \$882.50 plus interest of \$0.00	- 882.50
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$962.50

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for \$962.50. The order must be served on the respondent Tenants 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: December 30, 2010.

Residential Tenancy Branch