

DECISION

Dispute Codes: MNDC, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to restore the rent to its previous rate of \$930.00 as of September 1, 2010, based on compliance with the Dispute Resolution Decision issued on May 31, 2010 and a request for a monetary order for the \$430.00 difference paid in rent for each month beginning on September 1, 2010 to date. Both parties appeared and gave testimony.

Background and Evidence

The landlord testified that pursuant to an application by the tenant and a hearing held on May 31, 2010, a rent abatement of \$430.00 per month was ordered because the landlord had not properly restored the tenant's carpets as required. Accordingly the tenant's rent was reduced from \$930.00 to \$500.00 to continue until the landlord had complied with the order by completing the restoration and had received an order permitting the landlord to reinstate the normal rent. A copy of the May 31, 2010 decision was in evidence. The landlord testified that the carpeting was fully restored in August 2010 and therefore it was now seeking an order that the rent reverted to \$930.00 per month as of September 1, 2010 and a monetary order against the tenant for \$430.00 per month for September, October, November, December 2010 and for January 2011, for a total monetary order of \$2,150.00.

The tenant did not dispute that the carpet was restored in August 2010. However, the tenant did not agree with the monetary amount being claimed by the landlord and felt that the \$930.00 rental rate should only be restored as of today's hearing, not retroactive to September 2010. The tenant testified that although the landlord had finally restored the carpet, the tenant was forced to repeatedly pursue a resolution, endure exposure to mold and suffered substantial inconvenience. The tenant submitted into evidence a summary showing a chronology of dates, time spent by the tenant. The submission included a tally of the resulting costs for a total of \$2,840.00, which the tenant felt should offset the monetary claim made by the landlord.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the

tenancy agreement. However, in this instance on May 31, 2010, I find that the tenant obtained an order permitting the tenant:

*“to withhold **\$430 each month** from rent until the end of their tenancy – until such time as the landlord has fully complied with the Order of July 27, 2009 and the Clarified Order dated September 23, 2009, **or** has replaced the carpeting in the living room and the two (2) bedrooms, in their entirety; **and**, receives an Order from a Dispute Resolution Officer ending the rent abatement and reinstating the rent to its original amount of \$930”. (reproduced as originally written)*

I find that under the decision, the landlord was required to restore the carpet and thereafter to obtain an order through dispute resolution ordering an end to the abatement and reinstatement of the original rental rate. I find that the landlord complied with these mandatory steps and was therefore entitled to charge the tenant the normal rent of \$930.00 per month as of September 1, 2010 to continue from that date onward. Accordingly, I find the landlord is entitled to a monetary order of \$2,150.00 representing \$430.00 rent still owed each month including September 2010, October 2010, November 2010, December 2010 and January 2011.

In regard to the respondent's evidence and corresponding request for compensation, I find that the hearing was convened to deal solely with the matter before me, that being the landlord's application and claim. Accordingly, I find that I am not at liberty to hear nor consider a monetary claim put forth by the tenant, who did not file a cross application relating to this matter.

Conclusion

I hereby order that the monthly rental rate reverted back to \$930.00 per month as of September 1, 2010 continuing henceforth. I hereby grant a monetary order in favour of the landlord for \$2,150.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced 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: January 2011.

Residential Tenancy Branch