



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 10, 2010. Mail receipt numbers and proof of delivery were provided in the Landlord's evidence.

The Agent for the Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. No one was in attendance for the Tenant despite him being served notice of today's hearing in accordance with the *Act*.

Issue(s) to be Decided

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

Background and Evidence

The parties entered into a fixed term tenancy effective July 1, 2009 which switched to a month to month tenancy after September 30, 2009. Rent was payable on the first of each month in the amount of \$450.00 and the tenant paid a security deposit of \$225.00 on July 1, 2009. A move-in inspection report was completed on July 1, 2009 and a move-out report was completed on August 31, 2009. Both reports were conducted in the presence of the Tenant.

The Agent testified that the Tenant began to be short on his rent in June 2010 and when he failed to pay both July and August 2010 rent a 10 Day Notice to End Tenancy was posted to his door on August 3, 2010 due to \$1,200.00 in unpaid rent. The Tenant later provided the Landlord with written notice that he would be vacating the unit by August 31, 2010.

During the move-out inspection the Tenant paid the Landlord \$200.00 cash and he signed the move out inspection report agreeing to charges of \$25.00 for reconnection of hydro, \$90.00 for carpet cleaning, and the balance of the security deposit to be put towards the unpaid rent.

The Landlord is seeking a monetary claim of \$890.00 which is comprised of \$1,200.00 in unpaid rent, less \$200.00 cash payment, plus \$90.00 for carpet cleaning, plus \$25.00 hydro reconnection, less the security deposit of \$225.00.

Analysis

I have carefully reviewed the documentary evidence provided by the Landlord which included among other things, a copy of the tenancy agreement, a copy of the move-in

and move-out inspection reports, a copy of the 10 Day Notice to End Tenancy dated August 3, 2010, and a copy of a letter dated July 24, 2010 issued by the Tenant advising he will vacate the unit by August 31, 2010.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant Landlord pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Tenant.

The Landlord claims for the accumulated unpaid rent and late fees totaling \$1,000.00 from June, July, and August 2010, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenancy agreement section #9 provides that the Landlord may charge a \$25.00 late fee when rent is not paid on time. After reviewing the evidence before me I find the Landlord has proven her claim for damage or loss, as listed above, in the amount of \$1,000.00 (\$1,200.00 less \$200.00 paid in cash by the Tenant August 31, 2010).

The Evidence and testimony supports the Tenant agreed, in writing on the move-out inspection report to pay for carpet cleaning (\$90.00) and for the hydro re-connection fee (\$25.00) and that these amounts could be deducted from the security deposit. Based on the aforementioned I find the Landlord has provided sufficient evidence in support of



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their claim for \$115.00 (\$90.00 + \$25.00) in damage or loss, and the claim is hereby approved.

The Landlord has succeeded with their claim; therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Accumulated unpaid rent and late fees (June, July, August 2010)	\$1,000.00
Hydro re-connection fee	25.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,165.00
Less Security Deposit of \$225.00 plus interest of \$0.00	-225.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$940.00

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$940.00**. The order must be served on the Respondent Tenant 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: January 06, 2011.

Residential Tenancy Branch