



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for damage to the unit, site or property, for unpaid rent, to keep the security deposit in partial satisfaction of their claim, 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 Tenant.

Service of the hearing documents and the amended application was done in accordance with section 89 of the Act, sent via registered mail on September 28, 2010 and December 29, 2010. The Canada Post tracking numbers were provided in the Landlord's evidence. The Tenant is deemed to be served the hearing documents in accordance with the Act.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant despite her 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 order as a result of this breach?

Background and Evidence

The parties entered into a fixed term tenancy agreement effective February 1, 2010 which was set to switch to a month to month tenancy after July 31, 2010. Rent was payable on the first of each month in the amount of \$695.00 and the Tenant paid

\$347.50 00 security deposit on January 19, 2010. A move-in inspection report was completed approximately February 1, 2010 and the move out inspection report was completed in the presence of the Tenant on September 17, 2010. The Tenant provided the Landlord with her forwarding address on September 17, 2010.

The Landlord testified when the Tenant failed to pay the September 1, 2010 rent a 10 Day Notice to End Tenancy was served upon her on September 2, 2010. The September 1, 2010 rent remains unpaid. The unit has been re-rented as of October 1, 2010.

The Landlord is seeking \$695.00 for September rent, \$20.00 late payment fee as provided for in section #3(a) of the tenancy agreement, \$84.00 to clean the carpets, \$20.00 to clean the window blinds/drapes, \$201.60 for garbage removal, \$48.00 for general cleaning of the unit, \$224.00 for painting and the \$50.00 filing fee. The Landlord referred to his document evidence which included among other things, a copy of the move-in and move-out inspection report, and copies of receipts to support their claims. The Landlord drew attention to the note written on the top of the inspection report that indicates the unit was completely repainted just prior to the onset of this tenancy in January 2010.

Analysis

I have carefully considered the testimony and evidence provided by the Landlord which included, among other things, a copy of the tenancy agreement, the move-in and move-out inspection report, and copies of advertisements to re-rent the unit.

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 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 evidence supports the tenancy ended September 17, 2010 when the Tenant vacated the property, pursuant to section 44 of the *Act*.

The Landlord claims for unpaid rent of \$695.00 for September 1, 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. Therefore I approve the Landlord's claim of **\$695.00**.

The tenancy agreement provides for \$20.00 late payment fees in accordance with # 7 of the *Residential Tenancy Regulation*. The evidence supports the September 1, 2010 rent was late. Therefore I find the Landlord has proven the test for loss and I approve their claim in the amount of **\$20.00**.

The move-in / move-out inspection report indicates all of the floors were new and the unit was completely painted in January 2010. The condition at time of move-out was not completed on the move-out form and yet the Tenant signed the document on September 17, 2010 and provided her forwarding address. I accept the Landlord's testimony that the work being claimed was required as a result of this tenancy, as supported by the invoices provided in the Landlord's evidence. Therefore I approve the Landlord's claims for damages in the amount of **\$577.60** as follows: \$84.00 for carpet cleaning, \$20.00 for drapes/blind cleaning, \$201.60 garbage removal, \$48.00 for suite general cleaning, and \$224.00 for painting.

The Landlord has succeeded with their 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 this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Unpaid rent for September 1, 2010	\$695.00
Late payment fee	20.00
Cleaning, debris removal, painting, carpet and drape/blind cleaning	577.60
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,342.60
Less Security Deposit of \$347.50 plus interest of \$0.00	-347.50
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$995.10

Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$995.10**. 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 31, 2011.

Residential Tenancy Branch