



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MND, MNR, MNDC, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution for an Order for damage to the unit, an Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, an Order to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee for the Application.

The Landlord sent a notice of the hearing to the Tenant by a process server who made an oath of service. Section 89 provides for ways an applicant must serve the application upon the respondent, which includes leaving with the person or by sending by registered mail. However, under Section 71 of the Act I deemed the Tenant sufficiently served and allowed the Landlord to proceed. Despite being sufficiently served, the Tenant did not appear.

The Landlord appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order for monetary relief?

Background and Evidence

This tenancy began on September 1, 2009, with the parties entering into a written tenancy agreement, for a fixed term of one year. The monthly rent was set at \$1,200.00, payable on the first day of the month, and the Tenant paid the Landlord a security deposit of \$600.00 on August 19, 2009.

I heard testimony from the Landlord that the Tenant vacated the property without notice on or about September 4, 2010, and that the Tenant caused damage during the tenancy.

The Landlord testified and supplied photos of damage to and of the unclean state of the rental unit and invoices and receipts for the repair, clean and replacement of the various items needing replacement. The Landlord also testified that the tenant did not pay rent

for July, August and September and that he lost rent due to the state of the rental unit after the Tenant vacated.

The Landlord testified that he did not complete a move-in or a move-out inspection report in contravention of sections 23 and 35 of the *Act*.

The Landlord's witness testified that she cleaned the rental unit and that the rental unit was filthy and uninhabitable after the Tenant moved out.

Analysis

Based on the testimony, evidence, photographs and a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, as follows:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly** proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I note that sections 24 and 36 of the *Act* stipulate that if the Landlord fails to complete the move-in and move-out inspection report then the Landlord's right to claim against the security deposit is extinguished; however this does not prevent the Landlord from claiming damage or loss under section 67 of the *Act*.

In the absence of evidence to the contrary, I find the Landlord provided sufficient evidence and testimony of the damage and loss to the rental unit caused by the Tenant. I allow the Landlord \$100.00 for the return of the filing fee for the Application, and find the Landlord has established a **total monetary claim**, subject to the set off allowed under section 72(2), described below, as follows:

Rent for July, August, September 2010 (\$1,200.00 x 3)	\$3,600.00
Late fees per the tenancy agreement (\$50.00 x3)	150.00
Strata fines levied against the rental unit	700.00
Cleaning and supplies	497.72
Carpet cleaning	190.09
Ceiling drywall repair	25.00

Change door lock and mail box lock	85.00
Replace 2 FOBS	200.00
2 sets of building keys	30.00
Replace window and door screens	180.21
Filing fee	100.00
Sub total	\$5,758.02
Less Security Deposit set off	-\$600.00
Total Monetary Order in favour of the Landlord	\$5,158.02

As to the Landlord's claim for allowance of the carpet replacement, no notice move out charge and hallway damage, I find the Landlord submitted insufficient evidence to support these claims and I **dismiss** his claim for these expenses in the amount of \$1,200.00.

I **dismiss** the Landlord's claim for the October 2010 rent as the Landlord testified that the rental unit was re-rented in October.

I do not find the Act allows for registered mail fees and I **dismiss** the Landlord's claim for \$20.00 as well as the filing fee for a previous dispute resolution.

The Landlord is hereby granted a Monetary Order in the amount of **\$5,158.02**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary Order for \$5,158.02.

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 18, 2011.

Residential Tenancy Branch