



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for damage to the unit and for unpaid rent or utilities; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. He testified that he served the Notice of a Dispute Resolution Hearing to the tenants by way of registered mail. The landlord stated that he received a notice of unsuccessful delivery from Canada Post at the tenants' last known address. The tenants did not participate and the hearing proceeded in the tenants' absence.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of the main floor of a single family home. Pursuant to a written agreement, the fixed term tenancy was based on a one year lease, starting on January 15th 2010 and ending January 15th, 2011, at a rate of \$1450.00 payable on the first of each month. The tenant paid a security deposit in the amount of \$725.00.

The landlord testified that the tenants moved out of the unit on June 1st, 2010 while he was away. In his documentary evidence, the landlord provided a copy of a handwritten condition inspection report dated January 10th, 2010 signed by both parties. The landlord did not provide a condition inspection report for the end of the tenancy. He stated that his mother did a walk through on his behalf with the tenants, but there were still personal belongings in the unit and she did not notice the damages that the landlord claims in his application.

The landlord submitted 13 photographs showing; a damaged interior door; two 1.5 to 2.5 inch black marks on the carpet in one of the rooms; and several nail or screw holes in the walls throughout the unit.

The landlord updated his monetary claim as follows:

- Unpaid rent for May 2010:	\$1450.00
- Estimate to replace half the carpet:	\$ 461.50
- Repair and repaint holes in the walls:	\$ 400.00
- Replace and install new door + paint & hardware:	\$ 415.00
- Loss of sleep & work time caused by partying:	\$ 800.00
- Filing fee:	\$ 50.00
- Total:	\$3576.50

The landlord stated that he had difficulty make contacts with the tenants; he said that they were evasive and his calls to them were clearly unwelcomed.

Analysis

I accept the landlord's undisputed testimony that he served the tenants with the Notice of Dispute Resolution in a proper manner pursuant to the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

The landlord made a claim for a loss of earnings due to lack of sleep caused by the tenants' partying. This claim constitutes a loss of quiet enjoyment. Section 6 of the *Residential Policy Guidelines* specifies that in connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant from serious interference with the tenancy. A landlord does not have a reciprocal right to quiet enjoyment. A course of action available to the landlord in this case would be to serve the tenants with a 1 Month Notice to End Tenancy, or to file for dispute resolution if the tenants continued to violate the Act at the time. I find no legal basis to grant an award on this retroactive claim and I dismiss this portion of the landlord's application.

Concerning the estimate for half the carpet; section 7(2) of the *Act* states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. The landlord did not submit evidence on the nature of the marks, and whether they could be removed or fixed without having to replace half the carpet. Although I am satisfied that the damages were beyond reasonable wear and tear, I am not convinced that replacing half the room with new carpeting objectively reflects on the landlord's statutory obligation to mitigate his loss. Therefore I grant the landlord half the amount claimed for the sum of \$230.75.

Concerning replacing the interior door; in the absence of receipts I award the landlord half the amount for the sum of \$207.50.

Concerning holes in the walls: Section 1 of the *Residential Policy Guidelines* provides in part that it is expected that tenants will put up pictures in their unit; that holes caused for having pictures or mirrors are not considered damage; and that the tenants are not responsible for filling or painting the holes at the end of the tenancy unless they are in excess. The landlord made no oral submissions in that respect of his application, and the photographs that he submitted do not show convincing evidence of excess or deliberate negligent damage. Therefore I dismiss this portion of the landlord's claim.

Concerning the unpaid rent; I accept the landlord's testimony and I grant the landlord recovery for the loss of that month's rent in the amount of \$1450.00.

Conclusion

The landlord established a claim of \$1888.25. Since he was partially successful, I also grant the landlord partial recovery of the filing fee in the sum of \$25.00 for a monetary claim totalling \$1913.25.

I authorize the landlord to keep the tenants' \$725.00 security deposit. Pursuant to Section 67 of the Act, I grant the landlord a monetary order for the balance of \$1188.25.

This Order may be registered in the Small Claims Court 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: March 09, 2011.

Residential Tenancy Branch