



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD MNR FF

Preliminary Issues

After reviewing the Landlord's application for dispute resolution, at the onset of the hearing, the Landlord confirmed he wished to amend his application to request money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Landlord had indicated these requests in the notes written in the details of the dispute; therefore the Tenant was made aware of the Landlord's request in the initial application and would not be prejudiced by the Landlord's request to amend the application.

Based on the aforementioned I approve the Landlord's request to amend the application to include the request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

Later in the hearing the Landlord requested that I amend his application to change his request of \$350.00 for outstanding rent from October 2010 to be a request for \$350.00 for outstanding rent from August 2010. He argued that this was because the Tenants have failed to pay the Strata fines. The Tenant's were not previously advised of the Landlord's request for August rent. Therefore, to allow this change would prejudice the Tenants and would be a breach of the principles of natural justice. Therefore I decline to amend the Landlord's application to change the request from October 2010 rent to August rent, pursuant to # 23 of *Residential Tenancy Policy Guidelines*.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, to keep all or part of the security deposit, 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 Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was sent via registered mail on November 16, 2010. Mail receipt numbers and proof of delivery were provided in the Landlord's evidence.

The Landlord appeared at the teleconference hearing, 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 Tenants despite them being served notice of this hearing in accordance with the Act.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

The Landlord testified the parties entered into a fixed term tenancy agreement effective March 15, 2010 which was set to switch to a month to month tenancy after September 30, 2010. Rent was payable on the first of each month in the amount of \$950.00 and the Tenants paid the Landlord \$475.00 on March 11, 2010 as the security deposit. The move-in inspection report was conducted on March 11, 2010 however the Tenants failed to stay around to conduct the move-out inspection.

The Landlord advised that the Tenants failed to pay their August 2010 rent on time. He e-mailed the Tenants on August 25, 2010 requesting the August rent and payment for the outstanding Strata fines. The Tenants paid the August rent on August 30, 2010 and informed the Landlord on this date that they were moving out at the end of the contract which was September 30, 2010. He requested that they contact him to make arrangements for the move-out inspection and return of the keys during this conversation.

The Tenants failed to pay the September 1, 2010 rent and then on September 11, 2010 the Landlord received an e-mail from the Tenants, as provided in the evidence, informing him the keys were left with the front security desk.

The Landlord provided photos of the rental unit which supports his claim that it needed cleaning. He advised he is seeking \$350.00 for October 2010 rent because the Tenants

failed to pay the outstanding Strata fines. When I asked why the Tenants would be responsible for October rent the Landlord stated they owed him for the outstanding fines. He then stated he wanted it for August 2010 rent because of the outstanding Strata fines.

He is also seeking \$950.00 for unpaid rent for September 2010, \$100.00 for carpet cleaning, as support by the invoice he provided in his evidence, and \$50.00 to pay to clean the unit. He said he paid cash for the cleaning and he did not get a receipt. He could not provide an exact date of when the cleaning was conducted and stated it was after September 11, 2010, and then stated it was after the carpet cleaning, and then stated it was September 24, 2010.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the Tenants had vacated the property by September 11, 2010. Therefore, in accordance with Section 44(1)(d) of the Act I find this tenancy ended September 11, 2010.

The Landlord claims for unpaid rent of \$350.00 for October 2010. As per the aforementioned this tenancy ended September 11, 2010, therefore the Landlord is not entitled to rent for October 2010, and I hereby dismiss his claim of \$350.00, without leave to reapply.

The Landlord claims for unpaid rent of \$950.00 for September 2010, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenants have 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 Landlord is entitled to receive payment for rent up to the end of the tenancy, September 11, 2010, in accordance with Section 26 of the *Act*. For the period of September 12 to September 30, 2010 the Landlord is entitled to loss of rent in accordance with the fixed term tenancy agreement which does not expire until September 30, 2010. Based on the aforementioned I hereby find the Landlord has proven the test for damage or loss, as listed above, and I hereby approve his claim of **\$950.00**.

Section 37 of the *Act* provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

The Tenants failed to have the carpets cleaned at the end of the tenancy which caused the Landlord to suffer a loss of \$100.00 on September 23, 2010, as supported by his evidence which included a copy of the carpet cleaning receipt. Therefore I find the Tenant's breached section 37 of the *Act* and the Landlord has met the burden of proof as listed above. Therefore I approve his claim of **\$100.00**.

The Landlord has sought \$50.00 for cleaning costs of the unit. While he has provided evidence that the unit required some cleaning, there is no evidence to support the actual cost or date the expense was incurred. Therefore I find there is insufficient evidence to meet the burden of proof, as listed above. Therefore I dismiss the Landlord's request of \$50.00, without leave to reapply.

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

Unpaid Rent and Loss of Rent for the month of September 2010	\$950.00
Carpet Cleaning	100.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,100.00
Less Security Deposit of \$475.00 plus interest of \$0.00	- 475.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$ 625.00

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$625.00**. The order must be served on the respondent Tenants 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: March 17, 2011.

Residential Tenancy Branch