



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Preliminary Issues

The tenants' first and middle names were given the wrong way round on the landlords' application. The tenant and landlord gave consent at the start of the hearing for the tenants name to be documented for this Decision and Order the correct way and this amendment has been carried out.

Introduction

This matter dealt with an application by the landlord to obtain a Monetary Order for unpaid rent. The landlord also seeks an Order to keep the tenants security deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the tenant on February 09, 2011. The tenant was deemed to be served the hearing documents the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared and the tenant had an interpreter with her, all persons present gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

The tenancy agreement starts on December 01, 2010 but the landlord allowed the tenant to move into the rental unit on November 13, 2010. Rent for this unit was agreed at \$962.00 per month and was due on the last day of each month. The tenant paid a security deposit of \$481.00 on November 12, 2010.

The landlord testifies that the tenant moved into the unit and paid a prorated rent for November of \$594.00. Rent for December was due on November 30, 2010 but the tenant failed to pay this and the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on December 01, 2010. The tenant moved from the rental unit on December 01, 2010 without written notice to the landlord.

The landlord seeks to recover unpaid rent for December, 2010 of \$962.00 and seeks to an Order to keep the tenants security deposit to offset against the unpaid rent.

The landlord seeks to recover a late fee of \$25.00 for December, 2010. The landlord also seeks to recover the sum of \$75.00 for carpet cleaning and \$69.12 for drape cleaning. The landlord explains this is a charge made to all tenants when they vacate their unit. The landlord agrees the carpets and drapes had been cleaned at the start of this tenancy and the tenant had not caused any undue staining or damage to the carpets or drapes.

The tenant testifies that she was only living in the unit for a few days when she found it was so noisy living there she complained to the landlords' agent at that time. The tenant states the landlords' agent did not resolve this problem. The tenant states she also lost power to her unit for one day and night and she decided she could not live in the unit any longer as it

was making her sick with depression. The tenant agrees she did move out on December 01, 2010 and states she should not have to pay rent for December, 2010.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I refer the tenant to s. 45 of the *Act* which states:

- 45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As the tenant agrees she did not give notice to end the tenancy and I can see no reason why the tenancy contract was frustrated in any way the landlord is entitled to recover a loss of rental income for December, 2010 of \$962.00 and will receive a Monetary Order pursuant to s. 67 of the *Act*.

With regard to the landlords claim for a late fee of \$25.00 as the rent was due on November 30, 2010 and the tenant did not vacate until December 01, 2010 I have reconsidered by verbal decision on this matter and find the landlord is entitled to recover the late fee for December, 2010 as the tenant was aware this charge would be made as it is documented on page three of the tenancy agreement.

The landlord is entitled to keep the tenants security deposit of \$481.00 pursuant to s. 38(4)(b) and this sum will be offset against unpaid rent.

With regard to the landlords claim for carpet cleaning of \$75.00 and drape cleaning of \$69.12; I refer the landlord to the Residential Tenancy Policy Guidelines #1 which discusses the landlords and tenants responsibilities for residential premises. Under the section concerning carpets it states:

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

As the landlord agrees the tenant was only living in the unit for 18 days and did not stain the carpets or drapes and has provided no evidence to suggest that the carpets and drapes required cleaning again after an 18 day tenancy when they had been clean at the start of the tenancy. Consequently this section of the landlords claim is dismissed.

As the landlord has been partially successful with her claim I find she is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. The landlord will receive a Monetary Order for the following amount:

Unpaid rent	\$962.00
Subtotal	\$987.00
Less security Deposit	(-\$481.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$556.00

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$556.00**. The order must be served on the respondent 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: June 02, 2011.

Residential Tenancy Branch