



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent, for damage to the unit and for compensation for damage or loss - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by courier service during the mail strike in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on September 1, 2008 and ended, pursuant to a Notice to End Tenancy for non-payment of rent, on January 29, 2011. Rent in the amount of \$1,000.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$500.00 and a pet deposit in the amount of \$500.00. A move-in inspection was conducted with both Parties on October 17, 2011 and a move-out inspection was conducted by the Landlord alone on February 7, 2011. The Landlord offered the Tenant

more than two opportunities to attend a mutual move-out inspection however the Tenant failed to attend.

The Landlord states that the Tenants failed to clean the unit at move-out and left damages to a bedroom door, sliding glass doors, walls (by large nails and spikes), torn screens on patio doors, all carpets, bedroom and front entrance door locks, blinds, kitchen counter tops and trim. The Landlord provided photo evidence in relation to the damages claimed and evidence from a carpet cleaner that the stain in the one bedroom was not removable. The Landlord also states that the smoke alarm and a bathroom light fixture were missing. The Landlord claims liquidated damages, unpaid rent for February 2011 and 2 NSF charges for January and February 2011 rent cheques. The Landlord supplied two signed tenancy agreements as evidence to support the liquidated damages claim. The Landlord claims damages in the amount of **\$4,993.78** as set out in the monetary order work sheet submitted as evidence for the Hearing.

Analysis

Based on the undisputed oral and supporting evidence of the Landlord, I find that the Landlord has substantiated the damages claimed with the following exceptions:

Carpet replacement: I find that although the Landlord has substantiated that the Tenant left damages to the carpet in the form of a large stain and loss of weave to some areas of another carpet, I find that the claim for a reimbursement of total replacement of the carpet is unreasonable given the lack of evidence offered by the Landlord in relation to mitigation efforts for all of the carpets costs, such as repair of the weave loss or other such efforts. I find therefore that the Landlord is entitled to an amount that would more reasonably reflect a loss of useful life of the carpet in an amount of 1/3 of the cost claimed or **\$410.60**.

Window Blinds: I find that although the Landlord has substantiated damages to the blind, I do not find that the damages were significant and given the type of blinds, find that the damages were more readily those arising from normal wear and tear. I

therefore find that the Landlord has not substantiated the claim for replacement of the blinds and I dismiss the costs claimed for this item.

Lost rental income: Section 44 of the Act sets out when a tenancy will end. Where a Landlord has elected to end a tenancy because of non-payment of rent, a tenant is not liable to pay rent after the tenancy agreement has ended pursuant to section 44. As the Landlord elected to end the tenancy for non-payment of rent as provided for under Section 44 of the Act, I find that the tenant is not liable to pay rent after the tenancy ended on January 29, 2011. Accordingly, I dismiss this part of the Landlord's application.

Bank Fees: As the Landlord's claim for an NSF charge for January unpaid rent was within the matters previously claimed, I find that the Landlord has only substantiated the NSF charges and bank fees for February rent.

The following follows the order of the monetary worksheet and sets out the monetary entitlements of the Landlord:

1. Repairs and painting	\$ 642.00
2. Carpet	410.00
3. General cleaning	165.00
4. Patio cleaning	56.00
5. Blinds	0.00
6. Sliding door, etc	322.43
7. Woodfiller	26.16
8. Wall panels	195.75
9. Bedroom lock	25.17
10. Paint	18.75
11. Feb rent	0.00
12. Bank fees	32.00
13. Paint materials	8.34
14. Liquidated damages	<u>750.00</u>
Total	\$2,651.60

The Landlord is also entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$2,701.60**. Setting the security deposits plus interest in the amount of \$1,002.75 off the entitlement leaves the amount of **\$1,698.85** owing by the Tenant to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$1,002.75 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,698.85**. If necessary, this order may be filed 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: September 20, 2011.

Residential Tenancy Branch