



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, MNDC, 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 - Section 67;
2. An Order to retain the security - Section 38
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to their claims and to make prior submission to the hearing and fully participate in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on November 15, 2009 and ended August 13, 2011. Rent in the amount of \$675 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 \$300. The landlord provided a copy of the Tenancy Agreement.

The tenant testified that on July 09, 2011 they gave the landlord Notice to End the tenancy, then rescinded the notice at the landlord's request, with the remaining proviso that they were vacating August 15, 2011. The landlord testified that they accepted from the tenant another Notice to End the tenancy on August 1, 2011 to be effective August 31, 2011. No such notices were submitted into evidence for benefit of this matter. The parties agree that the tenant failed to pay rent for the month of August

2011 and on August 04, 2011 the landlord served the tenant with a 10 Day notice to end tenancy for non-payment of rent.

At the end of the tenancy the landlord and tenant conducted a walkthrough of the rental unit but no inspection was recorded. None the less, the tenant agrees that the landlord is owed \$75 for general cleaning of the unit, for which the landlord have provided a receipt. The landlord withdraws their claim for carpet cleaning.

The landlord claims advertising costs to re-rent the unit for September 01, 2011, in the amount of \$41.75 for which they have provided a credit card transaction record. The landlord claims that the tenant did not provided proper Notice to End, therefore the landlord had to resort to commercially advertising the unit. The quantum of the landlord's monetary claim is for the unpaid rent for August 2011, cleaning costs as agreed, and advertising costs, in the amount of \$791.75.

Analysis

Based on the testimony of the parties and on preponderance of the evidence, I find the tenant has not paid the rent for August 2011. Despite the disagreement between the parties, I accept that the tenant provided the landlord notice that they were vacating by August 15, 2011. None the less, the rent is payable on the 1st. of each month and it was not paid. I find that the landlord has established a monetary claim for **\$675** in unpaid rent.

In respect to the landlord's claim for advertising, when making any claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed *and* proof that the party took all reasonable measures to mitigate their loss. On the preponderance of the evidence in this matter I do not accept that the landlord did not have knowledge of the tenant's plans to vacate prior to August 01, 2011, and that there would be a vacancy by August 31, 2011. Advertising for a new tenant is within the realm of being a landlord and the manner of advertising is at the landlord's discretion. I find the landlord has not proven that their cost for advertising resulted from a breach of the Act by the tenant or that the landlord has sufficiently mitigated their claim for advertising, and I **dismiss** this portion of their claim without leave to reapply.

I find the landlord is entitled to **\$75** for cleaning as agreed by both parties.

I find the landlord is entitled to recovery of the **\$50** filing fee, for a total entitlement of **\$800**. The security deposit being held by the landlord will be off-set from the award made herein.

Calculation for Monetary Order

Rent for August 2011	\$675.00
Cleaning	\$75.00
Filing Fees for the cost of this application	50.00
Less Security Deposit and applicable interest <i>to date</i>	-300.00
Total Monetary Award	\$500.00

Conclusion

I order that the landlord retain the **deposit** and interest of \$300 in partial satisfaction of the claim and I grant the landlord an order under Section 67 of the Act for the balance due of **\$500**. 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*.