



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for unpaid rent or utilities, to keep all or part of the pet and or 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 Tenant for this application.

Service of the hearing documents, by the Landlord, was initially attempted on two occasions by courier June 17, 2011 and June 18, 2011 as Canada Post was on strike. The hearing documents could not be served via courier because each time they attended the Tenant's residence there was no one home. On July 11, 2011 the Canada Post strike had ended and the Landlord served the Tenant the hearing documents via registered mail. A print out from the Canada Post website was provided in the Landlord's evidence and indicates the Tenant received the hearing documents as signed for on July 12, 2011. Based on the aforementioned I find the Tenant was sufficiently served notice of today's hearing in accordance with section 89 of the *Residential Tenancy Act* (the Act).

The Landlord and resident manager appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant despite him being sufficiently served notice of today's hearing.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord suffered a loss and met the burden of proof to be awarded a Monetary Order as a result of that breach?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on May 1, 2010 and was set to switch to a month to month tenancy after April 30, 2011. Rent was payable on the first of each month in the amount of \$975.00 and the Tenant paid \$487.50 on April 6, 2010 as the security deposit. Inspections were attended by the Tenant on move in May 1, 2010 and move out on May 28, 2011.

The Landlord and resident manager affirmed that on May 18, 2011, the Tenant provided late written notice to end the tenancy effective May 31, 2011. The Tenant had vacated by May 28, 2011 and the move out inspection was completed. The Tenant signed the move out inspection report agreeing to the condition of the unit at the end of the tenancy as supported by the inspection report provided in the Landlord's evidence.

The Landlord confirmed they began advertising the unit for rent as of May 29, 2011 however they were not able to re-rent it until July 1, 2011. The Landlord is seeking monetary compensation for the following losses:

- \$975.00 for Loss of June 2011 rent
- \$168.00 for twelve hours of cleaning that was completed May 31, 2011 as supported by an invoice provided in evidence
- \$100.00 for general repairs and touch up to walls and replacement of a radiator knob as supported by an invoice provided in evidence
- \$100.80 for carpet cleaning performed on June 1, 2011 as per the invoice provided

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on a balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 45(1) of the Act provides that 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 per the aforementioned, if the Tenant wanted to end his tenancy May 31, 2011, in accordance with the Act, his notice would have had to been received by the Landlord no later than April 30, 2011; the evidence supports the notice to end was not provided to the Landlord until May 18, 2011. The unit was not re-rented until July 1, 2011. Accordingly the Tenant ended this tenancy in breach of section 45 (1) of the Act causing the Landlord to suffer a loss of \$975.00 for June 2011 rent. Therefore I approve the Landlord's claim of **\$975.00** for loss of rent.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

After careful consideration of the evidence before me, which included among other things, a copy of the move-in and move-out inspection reports and invoices from contractors who performed the required repairs, I find the Tenant breached sections 32(3) and 37(2) of the Act by leaving the rental unit in a condition requiring repairs and cleaning. Accordingly I approve the Landlord's claim for monetary compensation of **\$368.80** which is comprised of \$168.00 for cleaning plus \$100.00 general wall and radiator repair and \$100.80 for carpet cleaning.

The Landlord has been successful with their 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 Tenant's security deposit plus interest as follows:

Loss of Rent	\$ 975.00
Repairs and cleaning	368.80
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,393.80

LESS: Security Deposit \$487.50 + Interest 0.00	<u>-487.50</u>
Offset amount due to the Landlord	<u>\$ 906.30</u>

Conclusion

The Landlord's decision will be accompanied by a Monetary Order for **\$906.30**. This Order is legally binding and must be served upon the Tenant.

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 27, 2011.

Residential Tenancy Branch