



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

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 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 to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on July 11, 2011. Canada Post tracking information was provided in the Landlord's evidence which indicates the Tenant signed for the package on July 12, 2011. As per the Landlord's submission I find the Tenant was sufficiently served in accordance with section 89 of the *Act*.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was 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 served notice of this hearing in accordance with the *Act*.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain monetary compensation as a result of that breach?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on October 1, 2010 and was set to switch to a month to month tenancy agreement after September 30, 2011. Rent was payable on the first of each month in the amount of \$800.00 and on September 9, 2010 the Tenant paid \$400.00 as the security deposit. The move in

inspection report was completed on October 1, 2010 and the move out inspection was completed after the Tenant had vacated the property on June 23, 2011. The rental unit was re-rented as of July 1, 2011.

The Landlord affirmed that they are seeking recovery of the carpet cleaning costs of \$89.60 as supported by the invoice provided in evidence plus the \$300.00 liquidated damages fee as noted on the tenancy agreement provided in evidence. The Landlord confirmed the liquidated damage amount was pre-determined at the beginning of the tenancy as the cost to re-rent the unit if the agreement was not fulfilled.

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*.

Item 3 under “General information about residential tenancy agreements” on the tenancy agreement provides “If carpets and drapes are professionally cleaned at the commencement of the tenancy, the tenant is required to pay for professional cleaning at termination”. The evidence supports the Landlord had the carpets professionally cleaned on June 24, 2011 at the cost of \$89.60. The Tenant signed the move out inspection reporting agreeing to this cost. Accordingly I award the Landlord carpet cleaning costs of **\$89.60**.

The Landlord seeks \$300.00 as liquidated damages as provided for in the tenancy agreement under section 2 of the tenancy agreement. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I accept the Landlord’s testimony that this amount was predetermined and is a reasonable pre-estimate for costs incurred to re-rent the unit. Accordingly I approve the Landlord’s request for liquidated damages in the amount of **\$300.00**.

The Landlord has been successful; 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:

Liquidated Damages	\$300.00
Carpet cleaning	89.60
Filing Fee	<u>50.00</u>
SUBTOTAL	\$439.60
LESS: Security Deposit \$400.00 + Interest 0.00	<u>-400.00</u>
Offset amount due to the Landlord	<u>\$39.60</u>

Conclusion

The Landlord's decision will be accompanied by a Monetary Order for **\$39.60**. 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: October 11, 2011.

Residential Tenancy Branch