



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 the landlord's application for a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The landlord named two tenants in making this application. The landlord explained that there is only one tenant on the tenancy agreement but the tenant was hospitalized and the tenant's daughter began acting as the tenant's agent.

The landlord provided a copy of the notice to end tenancy and forwarding address written by the tenant's daughter on April 25, 2011. The landlord provided a copy of the courier receipt and tracking information showing efforts to send the hearing package to the tenant's daughter on June 15, 2011. Since there was a postal strike in effect June 15, 2011 courier delivery requiring a signature was deemed to be sufficient service by the Director. Although the tenant's daughter did not pick up the hearing package, I was satisfied the landlord sufficiently notified the tenant's agent of this hearing and I proceeded to hear from the landlord without the tenant or her agent present.

Issue(s) to be Decided

1. Has the landlord established an entitlement to loss of rent, telephone service and insurance for the month of May 2011?
2. Has the landlord established an entitlement to compensation related to drapery cleaning and disposal of abandoned furniture?
3. Is the landlord authorized to retain the security deposit and other deposits?

Background and Evidence

The landlord submitted the following information. The month-to-month tenancy commenced April 1, 2011. The tenant paid an \$825.00 security deposit and a \$100.00 deposit for a lifeline pendant. The tenant was required to pay rent of \$1,650.00 on the 1st day of every month plus \$42.00 for telephone and insurance.

On April 25, 2011 the tenant's daughter wrote the landlord a letter informing the landlord that the tenant had a stroke and was left incapable of living on her own. In the same letter the tenant's daughter requested return of the security deposit and provided a forwarding address in writing.

The landlord testified that the unit was vacated and the keys and lifeline pendant were returned April 30, 2011. The landlord filed this application June 14, 2011.

The landlord is seeking compensation for the following amounts:

<u>Item</u>	<u>Reason</u>	<u>Amount</u>
Telephone and Insurance – May 2011	Amounts payable per tenancy agreement. Insufficient notice to terminate services.	42.00
Drape cleaning	As provided on Notice to Vacate form.	55.00
Furniture disposal	Abandoned couch and chair broken down and taken to dumpster by landlord	250.00
Total claim		\$ 1,997.00

The landlord provided the following documentary evidence: the tenancy agreement; the April 25, 2011 letter written by the tenant's daughter; an unsigned Notice to Vacate form; the landlord's lease termination form; and, the courier receipt and tracking information.

Analysis

Upon review of the evidence before me, I make the following findings and provide the following reasons.

Unpaid rent

In order to end a month-to-month tenancy, the Act requires the tenant to give at least one full month of written notice to the landlord. In this case, I am satisfied that the landlord was provided much less than a month's notice. I grant the landlord's request to recover the monthly rent of \$1,650.00 for the month of May 2011.

Unpaid telephone and insurance

Clause 9 of the tenancy agreement provides that certain services are not included in the rental amount. An in-house telephone service is not included in rent and is provided to tenants at a cost of \$30.00 per month with long distance calls being an additional cost. Upon reading clause 9 in its entirety it would appear that a tenant may opt in or opt out

of the telephone service. I do not find a provision that required the tenant to give a certain amount of notice to opt out or cancel this service. Therefore, I find the notice of April 25, 2011 sufficient notice to opt out of the telephone service.

With respect to the landlord's request to recover \$12.00 for tenant's insurance I find entitlement to this amount to be unsupported by the tenancy agreement. Clause 11 of the tenancy agreement provides that tenants are to acquire their own insurance and provide proof of coverage to the landlord. If the tenant did not fact acquire tenant's insurance from the landlord I find it was not a service provided under the tenancy agreement but more likely a separate contract for service which I do not have jurisdiction to hear. Therefore, I make no award for the tenant's insurance payment.

Drapery cleaning

Upon review of the tenancy agreement, I find there is no provision requiring the tenant to clean the drapes. I find that a clause on the unsigned Notice to Vacate insufficient evidence of a term requiring tenants to clean the drapes under the tenancy agreement. Accordingly, I find the tenant's obligation to clean the drapery is as provided by the Act. The Act requires the tenant to leave the unit "reasonably clean". Residential Tenancy Policy Guideline 1 provides that tenants are generally held responsible for drapery and carpet cleaning after one year of tenancy, or sooner if there were pets or smoking in the unit. In this case, the tenancy was only one month in duration and I did not hear that the tenant smoked or had pets in the unit. Therefore, I make no award for drapery cleaning.

Furniture disposal

I accept the landlord's undisputed verbal testimony that the tenant left a couch and a chair behind at the property and that the landlord had to break it down and take it to a dumpster. I find the landlord entitled to compensation for his time and effort to dispose of the furniture; however, I find the landlord's claim of \$250.00 to be excessive in the absence of evidence to support such a claim. I find a reasonable award for the landlord's time to be \$100.00.

Security deposit

Section 38 of the Act provides for the return of security deposits. The landlord is required to comply with section 38(1) of the Act by either returning the security deposit to the tenant or making an application for dispute resolution within 15 days from the later of the day the tenancy ended or the date the landlord received the tenant's forwarding address in writing.

Where a landlord does not comply with section 38(1) of the Act, section 38(6) requires that the landlord must pay the tenant double the security deposit. The requirement to pay double the amount of the deposit is not discretionary and must be administered in accordance with the Act.

Section 44 of the Act provides that a tenancy ends when a tenancy vacates or abandons the rental unit. I heard the unit was vacated and the keys returned to the landlord April 30, 2011. Accordingly, I find the tenancy ended April 30, 2011. I am also satisfied the landlord had the tenant's forwarding address at this time. Therefore, the landlord was required to either return the security deposit or make an Application for Dispute Resolution by May 15, 2011 in order to comply with section 38(1) of the Act. Since the landlord did not file an Application for Dispute Resolution until June 14, 2011 the tenant is entitled to double the security deposit.

Monetary Order

Given the limited success of the landlord's application I award the landlord \$25.00 of filing fee paid for this application.

Section 72 of the Act provides that I may offset amounts owed to each party. Accordingly, I have offset the amounts awarded to the landlord against the security deposit and deposit on the lifeline pendant owed to the tenant, as follows:

Unpaid rent – May 2011	\$ 1,650.00
Furniture disposal	100.00
Filing fee	25.00
Less: double security deposit	(1,650.00)
Less: lifeline pendant deposit	<u>(100.00)</u>
Monetary Order	\$ 25.00

To enforce the Monetary Order, the landlord must serve it upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

I have found the tenant is entitled to double the security deposit. The landlord has been authorized to retain the tenant's doubled security deposit and lifeline pendant deposit

and has been provided a Monetary Order for the balance of \$25.00 in satisfaction of the claims against 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 04, 2011.

Residential Tenancy Branch