



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This was an application by the landlord for a monetary order and an order to retain the security deposits in partial satisfaction of the monetary award. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a basement suite in the landlord's house in Delta. The tenancy began August 1, 2009. I was not provided with a copy of the tenancy agreement, but both parties acknowledge the monthly rent was \$850.00 and that the tenant paid a security deposit of \$425.00 and a pet deposit of \$425.00.

On May 1, 2011 the landlord served the tenant with a Notice to End Tenancy by posting it to the door of the rental unit. The Notice was on an old, outdated form and it purported to be a 10 day Notice to End Tenancy for unpaid rent and also a one month Notice to End Tenancy for repeated late payment of rent. The tenant did not dispute the Notice. She gave the landlord a note on May 2, 2011 telling him that she would move out by May 15th. The landlord testified that he obtained the form of Notice to End Tenancy from the Residential Tenancy website on the internet. He testified that the tenant moved out on May 13, 2011 and left the rental unit in a mess. He said she left furniture and other belongings in the rental unit as well as a mini motorcycle. The landlord disposed of all of the tenant's belongings on May 15th. He rented a garbage disposal bin and had the belongings and other garbage in the rental unit hauled to the dump. The landlord said that he did so based on advice received from the Residential Tenancy Office.

The landlord testified that the tenant left the rental unit in a disastrous condition. The carpets were filthy; they were stained and smelly due to cat urine. The blinds were damaged by the tenant's cats and an upholstered countertop bar had been used by the cats as a scratching post. The landlord submitted some 50 pictures of the interior of the rental unit. The said that he had the carpets cleaned but after cleaning they were still stained and smelly so he replaced them. The landlord said the carpet was installed new one year before the tenancy commenced. The landlord did not submit any pictures of the carpet after it had been cleaned and did not provide any document to confirm the installation of new carpet one year before the tenancy began.

The tenant said that there were many problems with the tenancy and disturbances due to conflict between the landlord and his wife. The tenant did not pay rent for May. She gave the landlord a written notice that she would move out by May 15th. The tenant said that the carpet was not one year old when the tenancy started, it was at least ten years old and, as shown in the landlord's pictures, there were several different types of carpet in the rental unit. She testified that her cats used a letter box and did not urinate on the carpet. She said that the landlord showed her pictures taken of the carpet before her tenancy started that showed existing stains on the carpet. The tenant testified that she moved most of her belongings out of the rental unit on May 13th. She left one key in the rental unit and kept one. She intended to return the following day to get the rest of her belongings and perform cleaning. She said when she returned her key would no longer work and she could not get into the rental unit. She said she tried unsuccessfully to contact the landlord. she said she lost a couch, a loveseat, a mini motorcycle a kitchen table and chairs, a fax machine, a floor lamp and a toaster. The landlord has not filed an application to claim compensation.

The landlord claimed the following amounts:

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| • Removal of furniture and garbage: | \$308.00 |
| • Replace wet bar upholstery: | \$250.00 |
| • Cleaning rental unit: | \$458.65 |
| • Replace blinds and light bulbs: | \$167.84 |
| • Shampoo deodorize carpets | \$250.54 |
| • Replace carpets | \$1,731.74 |
| • On month unpaid rent: | \$850.00 |
| • Charge to locate tenant: | \$300.00 |

Analysis and conclusion

The Notice to End Tenancy given by the landlord was invalid, because it was written on an out dated form not in use since 2005 and purported to be both a 10 day and a one month Notice . I do not believe the landlord's testimony that he obtained a copy of the form from the internet and filled it out. If he obtained it from the internet he must have done so more than five years ago. The tenant moved most of her belongings out of the rental unit by May 13, 2011. She left a set of keys in the rental unit. The tenant said that she intended to come back to the rental unit to clean up and retrieve more of her belongings. She said that she tried to contact the landlord without success. The tenant did not pay rent for May. She left the keys in the rental unit on May 13th. She did not leave any message on the landlord's telephone answering machine requesting access to retrieve her belongings. The tenant's conduct in leaving the keys in the rental unit, the condition in which she left the rental unit and her failure to provide a forwarding address cause me to conclude that it is more likely than not that the tenant abandoned the rental unit and the belongings that she left there.

It may be that her belongings had value and the landlord failed to fulfill his obligations under part 5 of the Residential Tenancy Regulation concerning the abandonment of personal property and particularly section 25 of the Regulation that sets out the landlord's obligations to store and keep a written inventory of the property. I do not accept the landlord's testimony that he received advice from the Residential Tenancy Office that he could dispose of the tenant's belongings after two days. If he received that advice it was likely based on inaccurate or incomplete information related by the landlord. It will be up to the tenant to make an application for dispute resolution if she intends to pursue this matter.

I find that the landlord is entitled to recover the following:

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|-------------------------------------|----------|
| • Removal of furniture and garbage: | \$308.00 |
| • Replace wet bar upholstery: | \$250.00 |
| • Cleaning rental unit: | \$458.65 |
| • Replace blinds and light bulbs: | \$167.84 |
| • Shampoo deodorize carpets | \$250.54 |
| • Unpaid rent for May: | \$850.00 |

Total: \$2,285.03

I have allowed the claims for garbage removal, cleaning the unit and upholstery repair. I do not allow the claim for the cost to locate the tenant because this is not a recoverable cost under the *Residential Tenancy Act*. I find that the landlord is entitled to

an award of \$850.00 for May rent, but not thereafter because the landlord has not satisfied me that he acted promptly to mitigate his damages. I do not allow the landlord's claim for carpet replacement. The tenant disputed the age and condition of the carpet. The landlord did not provide evidence to show the carpet condition after cleaning and he did not submit evidence to prove the age of the carpet. I find that the landlord has failed to prove, on a balance of probabilities that the carpet needed to be replaced due to damage caused by the tenant.

The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$2,335.03. I order that the landlord retain the security and pet deposits totalling \$850.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$1,485.03. This order may be registered 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: October 06, 2011.

Residential Tenancy Branch