

DECISION

Dispute Codes: *MNSD, MND, MNR, MNDC, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of cleaning, repair to the rental unit, loss of income and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim against the security deposit and if so in what amount? Is the landlord entitled to loss of income and to recover the filing fee?

Background and Evidence

The tenancy started on April 01, 2010 for a fixed term of one year. At the end of the term the parties entered into a second fixed term tenancy which was due to end on April 30, 2012. Subsequent to a notice to end tenancy for cause and the tenant's application to dispute it, the landlord was awarded an order of possession. The tenant's moved out on July 31, 2011 which was the effective date of the notice. Both parties agreed that the landlord held a security deposit of \$475.00 which was the balance after deductions. The rent for the second term of the tenancy was set at \$970.00 per month payable on the first of each month. The rent included the utilities.

During the previous hearing on July 18, the tenant informed the Dispute Resolution Officer, that she intended to end the tenancy on July 31, 2011. The tenant also stated that she had informed the landlord in a letter dated June 22, 2011, about her intentions to move out. This letter, filed into evidence, is a long five page letter that addresses several issues and includes a line that states "*Therefore, I am now not filing a dispute for the Eviction Notice as I have decided to move*". The letter does not provide any further information of the date of her intended move. The landlord stated that he was informed of the moving date during the hearing on July 18, 2011.

That evening after the hearing, the landlord requested the tenant via text message to allow him to show the unit to a prospective tenant. The tenant declined because the landlord had not provided her with 24 hours notice.

On July 19, 2011, the landlord posted a notice on the tenant's door requesting specific times to show the rental unit. The landlord also advertised the availability of the unit, but was unsuccessful in finding a tenant for August 2011. A new tenant was found for September 01, 2011. The landlord is claiming a loss of income for August.

Both parties were present during a move out inspection conducted on July 31. The tenant stated that she did not get a copy of the report and believes that the report filed into evidence was altered by the landlord. The report indicates that at the end of tenancy, there were holes in the walls, scratches on the walls and stains on the carpet. The tenant indicated that a sentence that says "*burn mark on carpet*" was added in later on.

The tenant added her comments to the report expressing her disagreement with the landlord's report of damage and stated that all the holes and scratches on the walls were patched and painted, the tears in the carpet were present before the tenant moved in and she had professionally cleaned the carpet.

Both parties filed photographs of the damage to the walls and the landlord filed receipts for the repair work. The tenant did not file any evidence to support her testimony about having had the carpet steam cleaned.

In a letter dated May 06, 2011 the tenant informed the landlord that she would be having two guests visiting her for the period of May 16 to July 15. The first visitor arrived on May 16 and the second visitor arrived on June 15. Both left on July 15, 2011. The landlord is claiming an additional amount towards rent for the period of their stay.

The landlord is claiming the following:

1.	Repair and paint walls	\$301.28
3.	Repair carpet	\$75.00
4.	Loss of income for August	\$970.00
5.	Charge for additional occupants	\$1,050.21
	Total	\$2,564.49

Analysis

1. Repair and paint walls \$301.28

Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the painting. As per this policy, the useful life of interior painting is four years. The rental unit was painted in August 2009 and therefore by the end of the tenancy, the painting had two years of useful life left. Even though the tenant had repaired the holes in the wall, the photographs show that the finished product was not satisfactory and therefore had to be redone. Accordingly, I find that the landlord is entitled to \$150.64 which is the prorated value of the remainder of the useful life of the painting.

2. Carpet cleaning \$168.00

The tenant stated that she hired a steam cleaner and cleaned the carpet herself but did not file any evidence to support her testimony. The landlord filed a receipt for the cleaning. The receipt states that the carpet was stained and the photographs show that the carpet was in need of cleaning. Accordingly, I find that the landlord is entitled to his claim of \$168.00.

3. Repair carpet \$75.00

Residential Tenancy Policy Guideline #1 provides as follows:

The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises).

Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant.

Based on verbal testimony of both parties, I am unable to find that the damage was caused by neglect on the part of the tenant. Accordingly, the landlord's claim for \$75.00 is dismissed.

4. Loss of income for August \$970.00

The tenant disputed the notice to end tenancy and therefore the landlord was not in a position to advertise or show the rental unit, as he could not have known whether the tenant would be successful at having the notice set aside.

Even though the tenant stated that she informed the landlord in her letter that she would move out, she did not provide a date and in addition she served him this letter after she filed to dispute the notice. Based on the verbal testimony of both parties, I find that the landlord was informed of the last date of the tenancy on July 18, 2011.

Residential Tenancy Policy Guideline #5 states as follows:

“If the tenant files an application to dispute the notice, the landlord is not required to find a new tenant until the arbitration decision and orders are received, the time limits for a review application have passed, and, where a review application is made by the tenant, after the review decision is received by the landlord.”

When a landlord is claiming damages, he has a legal obligation to do whatever is reasonable to minimize the loss. This duty is commonly known in the law as the duty to mitigate. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. As soon as the landlord became aware that the tenancy would end on July 31, 2011, he advertised the availability and requested the tenant to allow showings.

I also find that had the tenant not filed an application to dispute the notice to end tenancy, the landlord would have had the opportunity to look for a tenant soon after he served the notice on the tenant. In these circumstances, if a tenant for August was not found, the landlord would not have been entitled to recover the loss of income.

However, in this case, the tenant disputed the notice and the landlord was informed of the date of the end of tenancy on July 18. Therefore the landlord did not have adequate time to find a tenant for August and accordingly, I find that the tenant is liable for the loss of income incurred by the landlord in the amount of \$900.00.

5. Charge for additional occupants:\$1,050.21

The tenant stated in her written submission that she had her parents living with her from May 16 to July 16. Since the time spent by her visitors was a minimum of one month and utilities are included in the rent, I find it reasonable that the landlord would request some compensation for the usage of added utilities.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Since the rent included utilities, I find it reasonable to award the landlord a minimal award towards the cost of utilities used by the additional occupants in the amount of \$100.00

I find that the landlord has established the following claim

1.	Repair and paint walls	\$150.64
3.	Repair carpet	\$0.00
4.	Loss of income for August	\$970.00
5.	Charge for additional occupants	\$100.00
	Total	\$1,388.64

Overall the landlord has established a claim of \$1,388.54. I also find that the landlord is entitled to the recovery of the filing fee of \$50.00 for a total entitlement of \$1,438.64. I order that the landlord retain the security deposit of \$475.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$963.64. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$963.64**.

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: November 14, 2011.

Residential Tenancy Branch