



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order in compensation for damage or loss under the Act, regulation or tenancy agreement – Section 67
3. An Order to retain the security - Section 38
4. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to the claim and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The landlord's claim on application is as follows:

Unpaid rent for May 2011	\$150.00
Loss of revenue for June 1-15, 2011	\$375.00
Missing drapery	\$150.00
Cleaning walls and carpets	\$200.00
Unpaid utilities	\$421.09
Total of landlord's claim <i>on application</i>	\$1296.09

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed. The tenancy began on August 01, 2010 and ended May 30, 2011 pursuant to a 1 Month Notice to End for Cause. Rent in the amount of \$750 was payable in advance on the first day of each month, plus the cost of utilities. The landlord collected a security deposit from the tenant in the amount of \$375. At the end of the tenancy the landlord and tenant did not perform a move out inspection. Regardless, the landlord testified that they did their own and completed a condition inspection report, although I do not have benefit of such a report in evidence. The landlord did not provide a move in inspection report.

The landlord provided a copy of a receipt for the full amount of rent (\$750) for May 2011, claiming the receipt was given in good faith with a promise to pay an outstanding amount of \$150. The landlord claims one half month's rent for June 2011 as they claim the tenant moved out earlier than required by the Notice to End. The landlord provided a *rental income ledger* showing that for June 2011, the landlord received \$600 rent for the month of June 2011 from an individual unrelated to the tenants.

The landlord claims the tenant left the unit unclean and in a deficient condition, inclusive of an unattended refrigerator and contents, unclean carpets, and marked walls purportedly requiring repainting, as well as having to remove a couch left behind. The landlord also claims that the drapery left behind was inferior to that which was in the rental unit upon moving in.

The tenant testified they did not clean the rental unit upon vacating it, but claim the landlord's request of \$200 for cleaning is not reasonable – offering that \$100 would be reasonable. The tenant further testified that the drapery they left behind was that which was in the rental unit when they moved in, but none the less offered that \$50 was more reasonable compensation for the landlord's claim for the missing drapery.

The landlord provided evidence that the utilities for the rental unit were left unpaid and to date still in arrears. The tenant does not dispute that they owe the landlord their claimed amount of \$421.09

Analysis

I must emphasize that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, solely, of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

As well, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs (with some allowance for loss of rent or loss of occupation during the repair), or replacement. In such a case, the onus is on the tenant to show that the expenditure claimed by the landlord is unreasonable.

I have considered all evidence and submissions to this claim and have considered all testimony given in the hearing.

I find the landlord has provided evidence that the rent for May 2011 was paid in full, and that the landlord received 80% of the respondent's payable rent for the month of June 2011. Therefore, on preponderance of all the evidence in this matter, I accept that the landlord suffered a loss of rental revenue for June 2011 – due wholly to the tenant's lack of cleaning and other deficiencies at the end of the tenancy, in the total amount of **\$150**.

The landlord has not supported their claim with evidence of cleaning to the unit. However, I accept the tenant's testimony that a claim for cleaning is valid, and I grant the landlord **\$100** for cleaning. The landlord has not supported their claim with evidence of damage to the unit's drapery. However, I accept the tenant's testimony that a claim of compensation for drapery is valid, and I grant the landlord **\$50** for damage to the unit, taking into account drapery and remedy to wall and removal of couch.

The landlord is entitled to their claim for unpaid utilities in the amount of **\$421.09**.

The landlord is further entitled to their claim for the cost to make this application in the amount of **\$50** for a total award to the landlord in the sum of **\$771.09**. The security deposit will be offset from the award made herein.

Calculation for Monetary Order

Unpaid rent for May 2011	\$0
Loss of revenue for June 1-15, 2011	\$150.00
Missing drapery	\$50.00
Cleaning walls and carpets	\$100.00
Unpaid utilities	\$421.09
Filing fee	\$50.00
Minus security deposit	-\$375.00
Total of landlord's claim on application	\$396.09

Conclusion

I Order that the landlord may retain the security deposit of \$375, and I grant the landlord an Order under Section 67 of the Residential Tenancy Act for the balance of **\$396.09**.

If necessary, this order may be filed 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: November 15, 2011.

Residential Tenancy Branch