



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that on September 1, 2011, the tenant provided a written notice to end this tenancy (entered into written evidence by the landlord) to the landlord by placing it in the mailbox of the landlord's agent at a nearby building owned by the landlord. The effective date of this notice was September 30, 2011. The tenant confirmed that he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on October 16, 2011. I am satisfied that the parties served each other with these documents in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on July 1, 2009. At the expiration of the original fixed term, the tenancy continued as a periodic tenancy. Monthly rent was set at \$810.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$435.00 security deposit paid on June 17, 2009

and July 2, 2009. The tenant vacated the rental unit on September 30, 2011 in accordance with his written notice to end this tenancy.

The parties agreed that they participated in joint move-in and joint move-out condition inspections dated July 1, 2009 and September 30, 2011. The landlord entered into written evidence copies of the reports for these inspections.

The landlord's amended application for a monetary award of \$1,029.59 included the following items:

Item	Amount
Unpaid October 2011 Rent	\$810.00
Carpet Cleaning	89.59
Furniture Removal	50.00
General Suite Cleaning	30.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award Requested	\$1,029.59

There was no dispute regarding the landlord's claim for carpet cleaning or general suite cleaning. The tenant testified that he left furniture in the rental unit for other tenants in the building who said that they wanted them. He did not enter into written evidence copies of letters from these other tenants. The tenant did not dispute the landlord's claim that no one took the furniture that the tenant left behind, requiring the landlord to incur costs in removing this furniture from the premises.

The principal issue in dispute between the parties was the landlord's claim that the landlord was entitled to one month's rent for October 2011 because the tenant did not comply with the requirements of the *Act* by failing to provide notice to end this tenancy before September 1, 2011. The tenant gave undisputed oral testimony that he tried to hand his written notice to end this tenancy to the landlords' resident manager at the suite identified by the landlord on his residential tenancy agreement where the landlord was conducting business a number of times during August 2011. However, the landlord's resident manager had vacated the premises and the landlord did not hire another resident manager until after September 1, 2011. During this period, the landlord's representative understood that notices were placed on the former resident manager's door and in the common area of this building near the tenants' mailboxes advising them that the landlord was temporarily carrying on business at a suite in a nearby building owned by the landlord. The tenant testified that he did not see any notice on the former resident manager's suite. However, he did obtain the landlord's address on September 1, 2011 when he picked up his mail. He paid his September

2011 rent and provided his notice to end this tenancy on September 1, 2011 at the address identified in the landlord's notice posted near the tenants' mailboxes.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the undisputed evidence before me, I am satisfied that the landlord is entitled to a monetary award of \$89.50 for carpet cleaning and \$30.00 for general suite cleaning. I also allow the landlord's application for a monetary award of \$50.00 for the removal of furniture from the tenant's suite at the end of this tenancy. I allow this \$50.00 monetary award because it is the tenant's responsibility to ensure that the premises are vacant and clean of the tenant's belongings at the end of a tenancy.

In considering the landlord's claim for unpaid rent for October 2011, I recognize that there may have been an element of confusion resulting from the landlord's failure to keep a resident manager in place at the address cited on the tenancy agreement as the location where the landlord conducted business operations. However, section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for October 2011, the tenant would have needed to provide his notice to end this tenancy before September 1, 2011. Even if the suite identified by the landlord as the location where the landlord was carrying on business were vacant, the tenant could still have provided written notice to end his tenancy to the landlord at that address before the end of August 2011. He did not do so and, instead, issued his notice to end this tenancy on September 1, 2011 by delivering the notice in the resident manager's mailbox at the landlord's other building on that date.

For these reasons, I find that the tenant did not comply with the provisions of section 45(1) of the *Act*.

There is undisputed evidence that the tenants did not pay any rent for October 2011. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for October 2011. The landlord submitted copies of payments made to newspapers to advertise the availability of the rental unit. She also stated that the rental unit was listed on Craigslist and the landlord's own rental listings. She provided undisputed oral and written evidence that the rental suite was rented on October 20, 2011 with a commencement date of November 1, 2011. I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the tenant's loss. As such, I issue a monetary award in the landlord's favour in the amount of \$810.00 for the landlord's loss of rent for October 2011.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee for this application.

Conclusion

I issue a monetary award in the following terms which allows the landlord to recover unpaid rent owing for October 2011, for damage arising out of this tenancy, and the landlord's filing fee for this application, and to retain the tenant's security deposit in partial satisfaction of this monetary award:

Item	Amount
Unpaid October 2011 Rent	\$810.00
Carpet Cleaning	89.59
Furniture Removal	50.00
General Suite Cleaning	30.00
Less Security Deposit	-435.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$594.59

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to

comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 05, 2012

Residential Tenancy Branch