



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, compensation for damage and loss under the Act, regulation or tenancy agreement, recovery of the filing fee, and an order to retain the security deposit in partial satisfaction of the claim.

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent, compensation for damage and loss under the Act, regulation or tenancy agreement, recovery of the filing fee, and an order to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The Landlord and Tenants agree that they had a fixed term written tenancy agreement for a furnished rental unit, which commenced on September 13, 2010, with an end date of October 01, 2011. The tenancy agreement states that the rent is \$1,800.00 per month, due on the first of the month. The parties agree that the Landlord holds a security deposit from the Tenants in the amount of \$900.00. The parties agree that the Tenants advised the Landlord of their move out on July 01, 2011. The parties agree that the rent in the amount of \$1,350.00 was paid for June 2011 and that the Tenants have not paid any further rent.

The Tenants testified that they had difficulty paying the rent after May 2011, as one of the Tenants, MD, had moved out and only Tenants KM and AL remained in the rental unit. The Tenants stated that they found the rental unit overpriced and they negotiated with the Landlord to lower the rent to \$1,350.00 for the months of June through September 2011. The Tenants stated that they agreed to let the Landlord keep their security deposit in exchange for the rent reduction. The Tenants stated that they decided to move out of the rental unit and did so before the end of June 2011, as they found a new place to rent for only \$1,000.00 per month. The Tenants stated that they agree that they did not clean the carpets in the rental unit. The Tenants also stated that they had a dog while they lived in the rental unit, however, they did not pay a pet

deposit during their tenancy. The Tenants stated that during their tenancy the housewares and furnishings had normal wear and tear for a furnished rental unit. The Tenants stated that their security deposit should cover any costs associated with the rental unit. The Tenants object to most of the Landlord's claims and noticed that he is claiming for casual labour where there is no receipt, and that some of his receipts contain costs for groceries, a pub receipt, and purchases for furnishings.

The Landlord testified that the Tenants broke their lease agreement with him. The Landlord stated that he only agreed to reduce the rent to \$1,350.00 for June and July 2011 if the Tenants let him keep the \$900.00 security deposit to offset the balance of the \$1,800.00 rent owing for those months. The Landlord submitted copies of emails between himself and the Tenants as evidence of the agreement to keep the security deposit to offset rent owed for June and July 2011. The Landlord stated that he was aware the Tenants were having some difficulties paying the rent and he had suggested that they find other Tenants to take over their lease if they were having difficulty with the rent. The Landlord stated that the Tenants failed to pay the rent for July 2011 and moved out breaking their fixed term tenancy by email on July 01, 2011, which he submitted a copy of into evidence. The Landlord stated that he had to clean the rental unit, scrape and paint some of the walls in the rental unit, clean the carpets, fix the washer/dryer, replace ruined furnishings and items missing from the furnished rental unit. The Landlord stated that he began to advertise for new Tenants immediately, however he was not able to find Tenants until October 01, 2011 as no one wanted to rent for the summer months. The Landlord is seeking the balance of the rent owing for June 2011 and rental income lost for the months of July, August, September 2011, an order to retain the security deposit to offset amounts owed, and damages and losses in relation to the rental unit. The Landlord provided a copy of the signed tenancy agreement and signed move-in inspection report, and copies of receipts for costs the Landlord claims he incurred in relation to the rental unit due to the tenancy ending. The Landlord stated that he did not perform a move-out inspection with the Tenants as they moved out suddenly and although he had their email addresses, he did not have a forwarding address at the time they moved out.

The Landlord claims as follows:

a.	Unpaid rent for June 2011 (\$1,800 less \$1,350 paid)	\$450.00
c.	Carpet Cleaning	\$190.00
d.	Washer/Dryer inspection and repair	\$181.43
e.	Miscellaneous Furnishings purchased including futon	\$238.80
f.	Miscellaneous Hardware supply purchases	\$86.00
g.	Miscellaneous Hardware supply purchases	\$103.66
h.	Miscellaneous Market purchases	\$122.00

i.	Miscellaneous Housewares & Electronics	\$62.00
j.	Pub-meal	\$78.00
k.	Miscellaneous Housewares-mats	\$22.38
l.	Casual Labour - no receipt	\$200.00
m.	Filing fee	\$100.00
	Total claimed by the Landlord	\$7,234.24

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the first of the month. The Tenants signed a fixed term tenancy agreement with the Landlord and the tenancy was not due to end until October 01, 2011. The Tenants moved out by July 01, 2011, but did not have a mutual agreement to end their tenancy with the Landlord. The Tenants breached the tenancy agreement. I am satisfied with the evidence that the Landlord was not able to find new Tenants for the rental unit until October 01, 2011. I do not find evidence that the Tenants or Landlord had agreed to a lesser rent. In the emails between the parties, submitted by the Landlord, these indicated that he would allow the Tenants to pay \$1,350.00 for June and July, if the Tenants would allow him to keep the \$900.00 security deposit to cover the balance of the rent. Section 38(4) of the Act requires that a tenant provide a landlord written authorization at the end of the tenancy if the wish the landlord to keep a security deposit for a liability or obligation. The Tenants did not give the Landlord written authorization regarding allocation of the security deposit. The Tenants evidence was conflicting with regards to whether the \$900.00 security deposit is to cover rent or to cover damages and losses in relation to the condition of the rental unit; I find that there is no agreement between the parties to any rent reduction. I find that the written tenancy agreement is clear regarding the rent and that there is no other agreement between the parties that cancels or changes the terms of the tenancy agreement. I find that the Landlord is entitled to \$450.00 unpaid rent for June 2011, as the Tenants only paid \$1,350.00 for that month. I also find that the Landlord is entitled to loss of rental income for the balance of the fixed term tenancy agreement; as a result he is entitled to \$5,400.00 for July, August, and September 2011 rental income loss. I find that the Landlord has established a monetary claim of \$5,850.00.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find there is no dispute that the Tenants did not perform carpet cleaning in the unit. I allow the Landlord's claim for \$190.00 for carpet cleaning and the Tenants indicated no dispute with this receipt at the hearing.

While the Tenants had a dog in the rental unit the condition of the walls is unclear. I am not satisfied with the Landlord's evidence regarding the costs relating to repairs or painting of the walls. The Landlord provided no photographic evidence of the condition of the walls, no receipt itemizing the labour, work, supplies needed by the labourers, and time involved. No move-out inspection was performed. I find that as the Landlord has not substantiated their claim for repairs or painting of the walls with sufficient evidence and I deny the Landlord's claim for hardware supplies, labour, market purchases, and meals.

I am also not satisfied with the Landlord's evidence regarding the furnishings damaged or missing from the rental unit and the washer/dryer repair in the rental unit. The furnishings are not itemized on the tenancy agreement. The condition of the washer/dryer and the furnishings are not itemized on the move-in inspection report performed with the Tenants. The Landlord did not provide a full inventory list for contents of the rental unit and no evidence of an inventory list signed by the Tenants at move-in was provided. No photographic evidence of the condition of the furnished items or washer/dryer in the rental unit was provided. No move-out inspection was performed. I find that the Landlord has not substantiated their claim to replace furnishings, housewares, kitchen supplies, or electronics, and repair the washer/dryer with sufficient evidence and I deny this portion of the Landlord's claim.

As the Landlord has in part succeeded in his Application, I find that the Landlord is entitled to recover the \$100.00 fee for this proceeding. This brings the balance of the amount owing to the Landlord to \$6,140.00.

The Landlord holds the Tenants' security deposit of \$900.00. I order that the Landlord retain the security deposit, in partial satisfaction of the claim. I grant the Landlord an order under section 67 for the balance due of **\$5,240.00**.

Conclusion

I grant the Landlord's claim for unpaid rent for June 2011, rental income loss for July, August, and September 2011, carpet cleaning, and the filing fee, however, the remainder of the Landlord's claim for damages and losses is dismissed.

I find that the Landlord is entitled to \$6,140.00 comprised of unpaid rent, rental income loss, carpet cleaning costs, and the filing fee. As I have ordered that the Landlord retain the security deposit of \$900.00, I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenants in the amount of **\$5,240.00**. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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 03, 2012.

Residential Tenancy Branch