

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damage to the unit – Section 67;
3. A Monetary Order for compensation– Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not attend the Hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

During the Hearing, the Landlord withdrew its claim for the replacement of curtains.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on December 1, 2011 on a fixed term to November 30, 2012. Rent of \$995.00 is payable monthly on the first day of each month. At the onset of the tenancy, the Landlord collected \$500.00 as a security deposit. The Parties conducted a move-in inspection on November 21, 2011. On April 18, 2012, the Tenant gave notice to end the tenancy for April 30, 2012 and provided a forwarding address. The Tenant failed to appear for the scheduled move-out inspection and although the Landlord posted a second opportunity for the next day, the Tenant failed to attend.

The Tenant's rent cheque for April 2012 was returned nsf and the Landlord claims \$995.00 in unpaid rent along with a \$25.00 for nsf charge and \$25.00 for a late fee. Both fees are provided for in the tenancy agreement. The Landlord advertised the unit continuously but was unable to fill the unit due to the cleaning to the unit, which was completed by May 6, 2012 and due to a high vacancy rate. The Landlord claims lost rental income for May 2012 of \$995.00. The Tenant left the unit prior to the end of the fixed term. The Landlord claims liquidated damages of \$500.00 as provided in the tenancy agreement.

The Tenant left the unit unclean and damaged and the Landlord claims the following:

- \$94.00 for cleaning the unit, invoice provided;
- 902.75 for replacement of carpet in the living room and dining room, invoice provided. The carpets were new at move-in and were damaged during the tenancy with over thirty (30) burn marks, photos provided; and
- \$56.00 for repair and cleaning of bedroom carpets that had a couple of burn marks, no invoice provided.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Where a tenancy agreement includes a liquidated damages clause, the landlord is required to make a choice; if the landlord chooses to claim the liquidated damage amount then the landlord considers that the tenancy came to an end and cannot make a claim for loss of rental income as if the tenancy did not end. The landlord cannot on one hand consider that the tenancy ended in order to receive payment for liquidated

damages, and on the other hand consider that the tenancy did not end in order to hold the tenant accountable for loss of rental income.

Based on the undisputed evidence of the Landlord, I find that the Tenant failed to pay rent for April 2012 and that the Landlord is therefore entitled to **\$995.00**. Given the tenancy agreement provisions, I also find that the Landlord is entitled to **\$50.00** for the nsf and late charges for April 2012 unpaid rent.

As the tenancy agreement contains a liquidated clause and the Landlord has claimed these damages, I find that the Landlord is entitled to **\$500.00** and is not entitled to lost rental income for May 2012. I dismiss the Landlord's claim for loss of income beyond the end of the tenancy.

Based on the undisputed evidence of the Landlord I find that the Tenant caused some damage to the living and dining room carpet. However as the photos do not show the full area of the carpets that were claimed as damaged, I find that the Landlord has failed to establish an entitlement to the entire cost of the carpet replacement. As there was damage over normal wear and tear, I find that the Landlord is entitled to reasonable compensation for the diminished value of the carpets in the amount of **\$250.00**.

Based on the undisputed evidence of the Landlord and considering the move-out report and photos, I find that the Tenant failed to reasonably clean some parts of the unit at the end of the tenancy and that the Landlord is therefore entitled to **\$94.00**. As no receipt or invoice has been provided for the cleaning of the bedroom carpets, I find that the Landlord has failed to establish costs and I dismiss this part of the application.

The Landlord has been found to be entitled to **\$1,889.00**. As the Landlord has been largely successful with its claim, I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,939.00**. Setting the security deposit of **\$500.00** plus zero interest off the entitlement leaves **\$1,439.00** owing by the Tenant to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$500.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,439.00**. 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: July 10, 2012.

Residential Tenancy Branch