



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, 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 (\$1750) - Section 67;
2. An Order to retain the security (\$529.29) - Section 38
3. An Order to recover the filing fee for this application (\$50.00) - Section 72.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to their claims 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:

Rent payable / tenancy agreement for June 2012	\$1750.00
Dumping fee	\$8.45
Registered mail fees (2)	\$22.84
Cleaning by landlord 16.5 hrs @ \$20	\$330.00
Filing fee for this application	\$50.00
Total of landlord's claim on Application	\$2329.29

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

This tenancy has been the subject of a previous Decision following an application by the tenant for dispute resolution. That Decision found that the tenant was entitled to a reduction of rent by \$250.00 to the end of May 2012.

The following is undisputed. The tenancy began on December 01, 2011 and ended June 01, 2012 when the tenant vacated. The tenancy agreement was a fixed-term tenancy for 6 months ending June 01, 2012 without requirement for the tenant to vacate at the end of the fixed term: reverting to a month to month tenancy. The landlord provided a copy of the tenancy agreement with addendums to the agreement. The tenancy agreement states that rent in the amount of \$1750 was payable in advance on the first day of each month. At the outset of the tenancy the landlord collected a security deposit of \$875.00 which the landlord retains.

The landlord claims that the tenant abandoned the tenancy agreement / rental unit on June 01, 2012 without any notice to the landlord of their intention to vacate. The tenant testified they vacated the rental unit in accordance with the tenancy agreement coming to the end of the fixed term. The landlord also claims that at the end of the tenancy the tenant left the rental unit generally unclean, and did not clean the carpet. The landlord also testified and provided evidence that the tenant left behind a quantum of refuse which required disposal, including a quantum of used cat litter and animal waste. The tenant testified that at the outset of the tenancy the tenant and landlord of the day conducted a mutual inspection which was not recorded, but that all elements presented by the landlord as having been deficient at the end of the tenancy were present in the rental unit when the tenant took possession of the unit, therefore would not be the responsibility of the tenant.

The testimony of the tenant is that they swept, vacuumed and steam-mopped the rental unit before they left, but did not have the carpeting professionally cleaned, as required

by the tenancy agreement. The landlord testified that they had to expend over 16 hours of labour to clean the unit. The landlord provided some evidence depicting that the rental unit was left with some hair on the floors, as well as some dirt. The tenant further testified they dispute the landlord's claim of \$20 per hour as unreasonable.

Analysis

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

It must be noted that the rent for this rental unit was ordered reduced by \$250.00 per month by a previous Decision and Order dated April 18, 2012, based on a reduction in the square footage and value of the tenancy agreement of December 01, 2011. This hearing was not provided with evidence that the arrangements and circumstances of the tenancy agreement and rental unit were different or altered at the end of May 2012 to their original circumstances of December 01, 2011 - than they were on April 18, 2012 and which lead to the Arbitrator's Decision of that hearing. Therefore, I find the legal principle of "*res judicata*" (*already determined in the appropriate forum*) applies in this matter and it is appropriate for the purposes of *this* hearing that the rent for the rental unit as of June 01, 2012 would have been the reduced amount (by \$250.00) of \$1500.00 per month.

Section 44 of the Act states as follows: **(emphasis mine)**

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [*tenant's notice*];
- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 *[tenant may end tenancy early]*;

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

I find that the tenancy agreement was for a fixed term of 6 months to June 01, 2012, with provision that the tenancy would then revert to a month to month upon the same terms. I find that the tenant was not required to vacate at the end of the fixed term, but that the tenant chose to do so. In the absence of a Notice to End in accordance with the Act, I find the landlord was unable to take measures to mitigate a loss of rent revenue for June 2012. As a result, I find the landlord is owed the rent for June 2012 in the amount of **\$1500.00**, without leave to reapply.

Section 37(2) of the Act, in part, states as follows: **(emphasis mine)**

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

I find the landlord has provided sufficient evidence to prove the tenant did not leave the rental unit reasonably clean at the end of the tenancy. While I accept the landlord's claim that they expended 16.5 hours of their labour to clean, I also accept the tenant's claim that the landlord's claim of \$20.00 per hour is extravagant. I find the landlord is

owed for cleaning at \$15 per hour for 16.5 hours, for a total of **\$247.50**, without leave to reapply. I further find the landlord's collateral claim for dumping fees of **\$8.45** is allowed.

I find that the contractual agreement between the parties called for the carpeting to be professionally cleaned at the end of the tenancy, and it was not. As a result, I grant the landlord their claim for professional carpet cleaning in the amount of **\$168.00**.

I find that mailing costs are costs associated with litigation, for which parties are individually responsible. The Act does not allow these costs as compensable costs, therefore, **I dismiss** this portion of the landlord's claim, without leave to reapply. The Act does allow that if an applicant is successful in their claim that they are entitled to recover their filing fee for the application, and I so award the amount of **\$50.00** for the landlord's filing fee.

As for the monetary order, I find that the landlord has established an entitlement as follows. The security deposit will be offset from the award made herein.

Rent for June 2012	\$1500.00
Dumping fee	\$8.45
Registered mail fees (2)	\$0
Cleaning by landlord 16.5 hrs @ \$20	\$247.50
Filing fee for this application	\$50.00
Minus security deposit held	-\$875.00
Total of award to landlord	\$1098.95

Conclusion

I Order that the landlord retain the deposit of \$875.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$1098.95**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on the parties.

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 24, 2012

Residential Tenancy Branch