



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNR, MNDC, MNSD, FF.*

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, cost of repairs, return of rental rebate and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied for the return of the security deposit, for the cost of cleaning and removal of the carpet and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Did the landlord suffer a loss of income? Is the landlord entitled to a monetary order to recover the cost of repairs, the rental rebate and the filing fee? Did the tenant give the landlord adequate notice to end the tenancy? Is the tenant entitled to the return of his security deposit and to the cost of cleaning and carpet removal?

Background and Evidence

The tenants entered into a tenancy agreement on April 08, 2012 with an effective start date of May 15, 2012. The tenant stated that he was moving from his residence in another city to the rental unit. Prior to entering into the tenancy agreement the tenant did not visit the rental unit. The tenant did not have someone inspect the unit on his behalf. Based on the landlord's advertisement he decided to rent the unit. The monthly rent was \$1,690.00 payable on the first of each month. The tenant paid a security deposit of \$800.00.

The tenant arrived with his family on May 15, 2012. The landlord did a walk through with the tenants and left a move in inspection report form with them. The landlord stated that the tenant and his family were tired after the journey from another city and therefore he left without filling out the inspection report. The landlord returned the next day and was informed of the various deficiencies in the rental unit.

On May 18, the tenant gave the landlord the inspection report filled out along with an addendum which indicated that the rental unit was deficient in several areas and needed a lot of repair work.

The landlord agreed to give the tenant a rent reduction for the period of May 15-31, in the amount of \$422.50 to accommodate some of the cleaning and work required to bring the unit up to the tenant's standard of acceptability. On May 20, 2012 the tenant decided to move out and informed the landlord that he would be moving out on May 26, 2012. The tenant stated that the unit was not suitable for his family and he requested the landlord to return \$140.00 for the final days of May that he would not be living in the rental unit. The landlord returned this amount to the tenant.

Both parties filed evidence by way of email correspondence between them. The tenant stated that at his request, the landlord allowed him to remove the carpet from one of the rooms and to remove and dispose of a refrigerator. The landlord stated that he agreed to this, on the understanding that the tenancy would continue for a reasonable amount of time. The tenant stated that while moving the refrigerator, the handle broke.

Landlord's application:

The landlord has applied for the cost of labour to install new carpet. He stated that the carpet was 12 years old. The landlord is also applying for \$30.00 for the cost to repair the handle of the refrigerator and \$140.00 to fill 14 holes made in the yard by the tenant's dog. The landlord stated that he suffered a loss of income for June due to inadequate notice to end the tenancy and is claiming \$1,690.00 for rent for June and \$140.00 for the rent refund he had given the tenant. The landlord stated that he found a tenant for July 01, 2012.

The landlord is claiming the following:

1.	Labour to install carpet	\$409.20
3.	Holes in yard	\$140.00
4.	Loss of income for June	\$1,690.00
5.	Rent refunded to tenant	\$140.00
6.	Filing fee	\$50.00
	Total	\$2,459.20

Tenant's application:

The tenant stated that not only did the landlord give him a rent reduction due to the condition of the unit but also promised to pay the tenant an hourly wage for work that was done. The tenant is claiming \$60.00 for cleaning the stove and oven, \$30.00 for cleaning the windows and \$60.00 for removal of the carpet. The tenant pointed out to an email from the landlord dated May 20, 2012 in which he offered this hourly wage. The landlord initially stated that the rent reduction covered the cleaning and carpet removal, but later agreed that that he had mentioned an hourly wage in his note to the tenant. The tenant is also applying for the return of the security deposit of \$800.00

The tenant is claiming the following:

1.	Cleaning oven and range	\$60.00
3.	Remove carpet	\$60.00
4.	Return damage deposit	\$800.00
5.	Filing fee	\$50.00
	Total	\$1,000.00

Analysis

Landlord's application:

1. Labor to install carpet - \$409.20

The landlord allowed the tenant to remove the carpet on the understanding that the tenant was going to occupy the rental unit for a reasonable amount of time. The carpet was 12 years old. Section 37 of the *Residential Tenancy Policy Guideline* speaks to the useful life of an item. I will use this guideline to assess the remainder of the useful life of the carpet. As per this policy, the useful life of carpet is ten years and therefore at the time it was removed it had outlived its useful life and would need replacement anyway. Therefore the landlord's claim for the cost of labor to replace the carpet is dismissed.

2. Repair refrigerator handle - \$30.00

The landlord agreed that he gave the tenant permission to remove and dispose of the refrigerator. The tenant agreed that the handle broke during the removal of the refrigerator. Since the landlord agreed to dispose of it, I dismiss his claim for \$30.00 to repair the handle.

3. Holes in the yard - \$140.00

The landlord stated that the tenant's dog made 14 holes in the yard. The tenant stated that she witnessed the dog making one hole but it was likely that the dog had made up to four holes. The landlord is claiming \$10.00 to fix each hole. I find that the landlord is entitled to \$40.00 to fix the holes made by the tenant's dog.

4. Loss of income - \$1,690.00

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Even though the tenant testified that the rental unit was not inhabitable, she entered into the tenancy agreement and is therefore bound by its terms.

Based on the testimony of both parties, I accept the landlord's evidence in respect of the claim. In this case the tenant did not give the landlord adequate notice to end the tenancy, thereby causing the landlord to suffer a loss of income for the month of June 2012. Accordingly, I find that the landlord is entitled to **\$1,690.00**, which is the loss that he suffered.

5. Rent refunded to the tenant - \$140.00

Since the tenant moved in on May 15, 2012, she must pay full rent for balance of May. The landlord agreed to give her a rent reduction and at her request returned \$140.00 of the reduced rent. I find the landlord is entitled to rent for the period of May 15 to May 31 and therefore has established a claim for the amount of \$140.00.

6. Filing fee - \$50.00

Since the landlord has proven most of his case, he is entitled to the filing fee.

Overall, the landlord has established a claim as follows:

1.	Labour to install carpet	\$0.00
3.	Holes in yard	\$40.00
4.	Loss of income for June	\$1,690.00
5.	Rent refunded to tenant	\$140.00
6.	Filing fee	\$50.00
	Total	\$1,920.00

Tenant's application:

1. Cleaning oven and range - \$60.00

2. Cleaning windows - \$30.00
3. Remove carpet - \$60.00

As discussed during the hearing, in an email dated May 20, 2012, the landlord had agreed to compensate the tenant at an hourly wage of \$15.00 for work done in the rental unit. Therefore I find that the tenant is entitled to her claim for the above mentioned cleaning and carpet removal.

4. Return damage deposit - \$800.00

The tenant has applied for the return of double his security deposit. Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

I find that the tenant moved out on May 26, 2012. I further find that the landlord made an application for dispute resolution on May 27, 2012, which is within the legislated time of 15 days. Therefore, I find that the tenant is not entitled to the return of double the security deposit but is entitled to the return of the base amount of the security deposit.

5. Filing fee - \$50.00

Since the tenant has proven his claim, he is entitled to the recovery of the filing fee.

Overall the tenant has established a claim as follows:

1.	Cleaning oven and range	\$60.00
3.	Remove carpet	\$60.00
4.	Return damage deposit	\$800.00
5.	Filing fee	\$50.00
	Total	\$1,000.00

The landlord has established a claim of \$1,920.00 and the tenant has established a claim of \$1,000.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$920.00 which consists of difference between the established claims of both parties.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$920.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order in the amount of **\$920.00**.

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 31, 2012.

Residential Tenancy Branch