



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 by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on November 08, 2012 . Mail receipt numbers were provided by the landlord's agent in evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The landlord's agent testifies that this tenancy started on April 01, 2012 for a fixed term of one year. The tenant was served a 10 Day Notice to End Tenancy for unpaid rent on June 04, 2012 and moved from the rental unit on June 15, 2012. Rent for this unit was \$1,400.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$700.00 on May 29, 2012. A copy of the tenancy agreement signed by the parties has been provided in documentary evidence.

The landlord testifies that the tenant attended both the move in and the move out condition inspections with the landlord and a copy of the inspection reports have been provided in documentary evidence. The tenant has signed the inspection reports and has also signed to agree the landlord may keep deductions from the security deposit as follows:

Move out fee - \$150.00

Carpet cleaning - \$120.00

Cleaning - \$25.00 plus tax an hour

Wall repair - \$120.00 to 4125.00 plus tax

Outstanding rent.

The landlord testifies that the move out fee was agreed on the tenancy agreement, the tenant had left stains on the carpets; the cleaning took two hours at \$25.00 per hour plus tax; and the tenant had painted two walls without the landlord's permission and these walls had to be restored to their original colour. The total invoice for the painting, the carpet cleaning and the cleaning came to \$414.40 including HST.

The landlord's agent testifies that the tenant failed to pay all the rent due for May, 2012. The tenant paid \$700.00 leaving an unpaid balance of \$700.00. The tenant failed to pay rent for June, 2012 of \$1,400.00 the landlord seeks to recover a balance of unpaid rent for these months to the amount of \$2,100.00.

The landlord's agent testifies that the tenants preauthorised rent payments did not go through at the bank. The landlord's agent testifies that the landlord uncured bank charges of

\$25.00 for each of the two months and seeks to recover this from the tenant as per the clause in the tenancy agreement.

The landlord seeks an Order to keep the tenants security deposit of \$700.00 in partial satisfaction of the landlords claim. The landlord seeks to amend his claim from \$1,864.40 to \$2,064.40 to reflect the actual costs incurred. The landlord also seeks to recover the \$50.00 filing fee paid for this application.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent. I refer the tenant to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

With this in mind I find from the landlords undisputed evidence before me that the tenant has rent arrears to the sum of **\$2,100.00** and the landlord is entitled to recover this from the tenant pursuant to s. 67 of the *Act*.

With regards to the landlords claim to keep the tenants security deposit; when a tenant has agreed in writing that the landlord may retain all or a portion of the security deposit then I am not required to make a decision in this matter. However on the move out condition inspection report, in the section signed by the tenant giving the landlord written permission to keep all or part of the security deposit, some of the figures provided by the landlord do not have a final amount included. Therefore having reviewed the landlords documentary evidence provided concerning the items claimed for I have made a decision in this matter. It is my decision that the landlord is entitled to keep the tenants security deposit of \$700.00 pursuant to s. 38(4)(b) towards the claim for carpet cleaning, the move out fee, the NSF fees, the wall repainting costs, and the cleaning costs to the sum of **\$614.40**. The balance of the security deposit will be offset against the unpaid rent.

I find the landlord is entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$2,100.00
NSF fees	\$50.00
Carpet cleaning, painting and unit clean	\$414.40
Move out fee	\$150.00
Filing fee	\$50.00
Less security deposit	(-\$700.00)
Total amount due to the landlord	\$2,064.40

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,064.40**. The order must be served on the respondent and is enforceable through the Provincial Court 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: February 08, 2013

Residential Tenancy Branch

