



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, MNR, FF

Introduction

This hearing was convened in response to an application by the landlord for a monetary order for *loss of revenue*, and for *cleaning*, and *to retain the security deposit* in partial satisfaction of their monetary claim. The application is inclusive of recovery of the *filing fee*.

The landlord participated in the hearing. The tenant did not attend although served with the application and Notice of Hearing sent by registered mail sent on July 24, 2014. The landlord provided proof of mail registration comprised of the tracking number for the mail, purported to have been received by the landlord. I find the tenant was served with the landlord's Application and Notice of Hearing in accordance with Section 80 of the Act and is apprised of the landlord's claim against them.

The landlord was given opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The relevant undisputed testimony in this matter is that the tenancy started April 01, 2012 and ended on June 28, 2014, when the tenant vacated. The monthly rent payable under the periodic or month to month tenancy agreement was \$775.00. At the start of the tenancy the landlord collected a security deposit of \$375.00 which the landlord retains in trust. At the start of the tenancy the landlord did not document a *move in* inspection. The landlord testified that near the end of June 2014 there was some verbal

communication between the parties in respect to the tenant's plan to vacate; however, they did not provide the landlord with a written Notice to End the tenancy as prescribed by the Act. The landlord testified the tenant moved on the last weekend of June 2014 without notifying the landlord. The tenant did not partake in a *move out* inspection and the landlord did not complete a condition inspection report of the unit, although the landlord took some photographs. The tenant left the landlord a letter with, amongst other particulars, their forwarding address. The landlord claims that the tenant left the unit unclean, with remnants indicative of a pet, a pet odor, and some damage. The landlord testified that they attended to a full cleaning of the unit, inclusive of carpet and upholstery cleaning. The landlord also claims they made certain repairs to the walls and repainted the unit. The landlord provided a receipt for carpet cleaning and cleaning of 2 sofas in the amount of \$140.00. The landlord claims they spent 3 hours cleaning the unit at a claimed cost of \$150.00, as well as a quantum of time and cost for repairs and for painting the unit.

The landlord claims that the lack of written notice to end the tenancy in accordance with the Act caused the landlord a loss of revenue for July 2014. Therefore, the landlord seeks the equivalent to one month's rent for July 2014.

Analysis

On preponderance of all the evidence in this matter, I have reached a Decision upon the following findings.

Under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following 4 point test established by Section 7 of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement

3. *Verification* of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss or of damage – outside the scope of reasonable wear and tear, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. The landlord must then provide evidence that can verify the monetary amount of the loss or of the damage. Finally, the landlord must show that reasonable steps were taken to address the situation and to *mitigate or that they minimized* the loss incurred.

I find the tenant ended the tenancy without providing the landlord with the prescribed Notice to end the tenancy in accordance with **Section 45** of the Act which, in relevant part, states as follows,

Tenant's notice

- 45** (2) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

I find the tenant failed to provide the landlord with legal notice under the Act to end the tenancy as required by Section 45. In the absence of written notice to vacate as required by the Act, I accept that the landlord was unlikely unable to garner a new tenant for July 01, 2014. As a result, I grant the landlord one month's rent for July 2014 in the amount of **\$775.00**.

I accept the landlord's testimony and document evidence as establishing that they incurred the amounts claimed for *carpet and upholstery cleaning* in the amount of **\$140.00**. I find the landlord's claim of 3 hours of *general cleaning* in the amount of \$150.00 to be extravagant, and as a result I grant the landlord **\$100.00** for this claim.

I find that the landlord did not originally apply for costs of *damage* to the unit and did not amend their application to reflect this claim. Having found that the tenant was served with only the landlord's original application I find that the tenant was not placed on notice, or notified, of the landlord's orally amended claim for *repairs and painting*. As a result I must **dismiss** the portion of their claim for *damages*, with leave to reapply.

As the landlord has been largely successful in their application the landlord is entitled to recover their filing fee. The security deposit held in trust will be off-set from the award made herein.

Calculation for Monetary Order

Costs for cleaning - sum	\$240.00
Loss of revenue for July 2014	\$775.00
Filing fee for the cost of this application	50.00
<i>Less security deposit</i>	<i>-375.00</i>
total monetary award to landlord	\$690.00

Conclusion

I Order that the landlord retain the deposit of \$375.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$690.00**. 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 both 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: December 10, 2014

Residential Tenancy Branch

