



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MND, MNSD, FF

Introduction

This hearing dealt with the landlord's request for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, damage to the rental unit, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the other parties' submissions.

At the commencement of the hearing I heard the tenants had already vacated the rental unit. Therefore, I find the landlord does not require an Order of Possession and I do not provide one with this decision. The remainder of this decision pertains to the landlord's monetary claim.

Issues(s) to be Decided

1. Has the landlord established an entitlement to compensation for unpaid rent and damages, and if so, the amount?
2. Retention of the security deposit.
3. Award of the filing fee.

Background and Evidence

Upon review of the evidence before me, including verbal testimony from both parties, I make the following findings. The parties entered into a one year fixed term tenancy for July 1, 2008 through June 30, 2009 requiring the tenants to pay rent of \$850.00 on the 1st day of the month. The tenants paid a \$425.00 security deposit and a \$425.00 pet deposit on April 30, 2008. The tenants failed to pay rent for June 2009. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on June 2, 2009. The Notice had an effective date of June 12, 2009. The tenants vacated the rental unit on June 12, 2009 and left a voicemail message on the landlord's after hours answering machine.

The landlord is claiming the following amounts against the tenants:

<u>Type of loss or damage</u>	<u>Description</u>	<u>Amount claimed</u>
Locksmith fees	Tenant changed locks	40.00
Carpet cleaning	Carpets dirty	94.50
Cleaning	7.5 hours @ \$20.00/hr	150.00
Cleaning supplies		30.50
Garbage removal	Remove couch and other debris -- 1.5 hours @ \$20.00/hr	30.00
Laundry room key	Not returned by tenants	25.00
Total		\$ 1,220.00

The landlord made the following submissions. The rental unit was re-rented for July 1, 2009 and the landlord is claiming unpaid rent for the month of June 2009. The tenants changed the locks and the landlord had to change the locks back. The tenants had pets and the carpets were dirty. The tenants did not clean the unit despite the opportunity to return and clean the unit after they vacated. The tenants left a couch and other debris for the landlord to dispose of. The tenants failed to return the laundry room key.

The tenants stated that the landlords knew the tenants were going to vacate on June 12, 2009 and the landlord did not offer the tenants the opportunity to conduct a move-out inspection. The tenants were of the position that the landlord had extinguished its right to retain the security deposit or pet deposit. The tenants took the position that if they did have to pay rent it should only be for the 12 days they resided in the rental unit in June 2009. The tenants acknowledged the landlord discussed returning to the rental unit to clean the unit and the tenants did not return to the rental unit. The tenant acknowledged changing the locks but claimed he left the keys for the landlord on the counter, including the laundry room key. The tenants claimed they left the rental unit reasonably clean and that the landlord had blown the photographs of the unclean areas out of proportion. The tenants acknowledged leaving a couch behind in the rental unit and a bag of garbage but felt this was acceptable as a different piece of furniture was left in the unit when they moved in.

The tenants claimed seeing new tenants in the rental unit in mid June 2009; however, the landlord stated that the persons seen in the rental unit were the cleaners. The landlord also stated that the two keys left behind by the tenant did not fit the locks installed by the tenant and the laundry room key was not left on the counter.

Residential Tenancy Branch
Ministry of Housing and Social Development

As evidence for the hearing, the landlord provided a copy of the tenancy agreement, receipts for the locksmith and carpet cleaning, a log of hours spent cleaning, the inspection report and photographs of the rental unit. The move-in inspection was completed by both parties but only the landlord participated in the move-out inspection on June 15, 2009. The tenants provided a written statement that the rental unit was worn but habitable when they moved in and when they moved out. The tenants' statement also provides that the tenants did not abandon the rental unit as alleged by the landlords but that they moved out as per the Notice they were served.

Analysis

A tenant is required to pay rent when due under the tenancy agreement. The tenants were required to pay rent of \$850.00 on June 1, 2009 for the month of June 2009 under the terms of the tenancy agreement in effect at the time. The tenants rented on a monthly basis, not a daily basis, therefore I reject the tenants' position that they should only pay for the 12 days they resided in the rental unit. I do not find sufficient evidence that the landlord had re-rented the unit prior to July 1, 2009. Therefore, since the tenants failed to pay rent for June 2009 and they did not have the legal right to withhold rent, I find the landlord entitled to recover unpaid rent for June 2009.

As the tenants were informed at the hearing, a tenant does not have the legal right to change locks, unless the tenant has authorization from a Dispute Resolution Officer. A tenant does have the right to request the landlord change the locks at the beginning of a tenancy. In this case, the tenants did not have the right to change the locks and I find the disputed verbal testimony is not sufficient for me to conclude the tenants gave the landlord the keys to the new locks. Therefore, I find the landlord entitled to compensation of \$40.00 for a locksmith as claimed.

As I heard undisputed testimony the tenants had at least one pet, and the tenancy agreement required the tenants to professionally clean the carpets at the end of the tenancy, I find the tenants were obligated to steam clean the carpets at the end of the tenancy and I award the carpet cleaning costs of \$94.50 to the landlord.

Upon review of the photographs, I am satisfied the rental unit was not sufficiently cleaned when the tenants vacated and I find 7.5 hours spent cleaning to be reasonable. The cleaning supplies costs of \$30.00 were unsupported by documentation and I find \$30.00 to be rather excessive. Therefore, I award cleaning costs to the landlord in the amount of \$150.00 for the labour and \$15.00 for cleaning supplies.

As the tenants acknowledged leaving a couch behind in the rental unit, I award the landlord \$30.00 to dispose of the couch. Although I find it probable the tenants failed to return the laundry room key, the landlord did not substantiate that the unreturned key the cost the landlord \$25.00; therefore, I deny that portion of the landlord's claim as unsubstantiated.

I have considered the tenants' position with respect to the landlord's right to retain the security deposit briefly. Even if the landlord had extinguished its right to the security deposit the extinguishment pertains to damages only. In this case, the landlord has proven an entitlement to unpaid rent. Accordingly, the landlord may apply to retain the security deposit for unpaid rent. Furthermore, section 72 of the Act provides a Dispute Resolution Officer the authority to offset amounts payable to a party by the other party. As the landlord was successful in establishing a monetary claim in excess of both the security deposit and pet deposit, I offset the tenants' deposits against the amounts awarded to the landlord.

As the landlord was largely successful with this application, I award the filing fee to the landlord. I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – June 2009	\$ 850.00
Locksmith	40.00
Carpet cleaning	94.50
Cleaning labour	150.00
Cleaning supplies	15.00
Garbage removal	30.00
Total claim allowed	\$ 1,179.50
Less: security deposit, pet deposit and interest	(858.87)
Plus: award of the filing fee	50.00
Monetary Order	<u>\$ 370.63</u>

The landlord must serve the Monetary Order upon the tenants and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

This landlord is authorized to retain the tenants' security deposit and pet deposit in partial satisfaction of the amounts awarded to the landlord with this application. I also provide the landlord with a Monetary Order for the balance owing of \$370.63 to serve upon the tenants.



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Ministry of Housing and Social Development

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 29, 2009.

Dispute Resolution Officer