



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order for compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

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 April 29, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on May 04, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*. The hearing was reconvened on July 31, 2009 and September 21, 2009 and new hearing dates and times were posted to each party.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present his 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.

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for loss of income, cost of advertising and damage to the rental unit?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

Background and Evidence

This tenancy started on July 01, 2008 and ended on November 30, 2008. This was a fixed term tenancy for one year to expire on June 30, 2009. Rent for this two bedroom rental unit was \$1,400.00 per month payable on the 1st of each month. The tenant paid a security deposit of \$700.00 on July 01, 2008.

The landlord states that the tenant left the rental unit before the end of the fixed term. The landlord attempted to re-rent the unit but was unable to do so until February 01, 2009. The landlord had to reduce the rent to attract a new tenant from \$1,400.00 to \$1250.00.

The landlord incurred additional costs in re-advertising the rental unit as the tenant ended his tenancy before the fixed term at a cost of \$104.63

The landlord and tenant carried out a move in and move out condition inspection and this report has been provided in evidence. This report shows that the rental unit at the start of the tenancy was new with no damages or repairs. At the end of the tenancy the report shows that there was some damage to the master bedroom carpet. The landlord claims the tenant caused cigar or cigarette burns to the carpet and this carpet was repaired at a cost of \$280.00. The landlord also claims the cost of cleaning the carpets at a cost of \$120.00 and for the replacement of carpets for the entire unit at a cost of \$2,250.00.

Analysis

I have carefully considered all the evidence before me, including the submissions made at today's hearing by the landlords' agent. I find the tenant did end the tenancy before the end of the fixed term and as such the landlord is entitled to recover a loss of income up until the time the unit was re-rented. The landlord has provided sufficient evidence to determine their advertising attempts and the costs incurred for this. I also find the landlord had to re-rent the unit at a lower monthly rent to attract a new tenant. The Residential Tenancy Policy Guidelines # 3 state that the landlord is entitled to be awarded damages to an amount to put the landlord in the same position as if the tenant had not breached the agreement. This includes compensating the

Residential Tenancy Branch
Ministry of Housing and Social Development

landlord for any loss of rent up to the earliest time the tenant could have legally ended the tenancy and the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy. Due to the above I find the landlord is entitled to a loss of revenue for two months to a sum of 2,800.00 and an additional amount because he was had to re-rent the unit at the lower amount of \$1,250.00 to the end of the fixed term of the tenancy from February to June, 2009 to an amount of \$750.00 (5 X \$150.00).

The landlord has claimed three separate costs connected to the carpet of the rental unit. A cost for cleaning the carpets of \$126.00, a cost for carpet repair to the master bedroom of \$ 280.00 and a cost to replace the carpets in the entire unit at a cost of \$2,250.00. I find the move out condition inspection report only states that there was damage to the carpet in the master bedroom and as such the tenant can not be expected to pay for the carpet replacement of the entire unit. In this instance the burden of proof is on the landlord to prove that the tenant did cause damage to the entire carpet. I find the landlord has not provided any evidence to sustain this claim that the tenant did damage the entire carpet to an extent that the entire carpet had to be replaced. However, the landlord has provided an invoice concerning the repair to the carpet in the master bedroom. Therefore, I find the tenant is only reasonable to pay for the repair costs to the master bedroom carpet. With regards to the claim for carpet cleaning I find that the Residential Tenancy Guidelines #1 state:

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

The move out condition inspection report does not identify that the carpets have been left stained or dirty at the end of the tenancy and again only highlight damage to the carpet in the master bedroom. Therefore, I find the tenant is not responsible for the carpet cleaning costs.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

I find the landlord is entitled to retain the full security deposit plus interest (\$ 5.28) towards the damage to the carpets and loss of revenue. As the landlord has been partially successful with his claim he is entitled to recover the filing fee of \$100.00 from the tenant. A Monetary Order has been issued for the following amount:

Loss of revenue for December and January	\$2,800.00
Advertising costs	\$104.63
Repair to carpet in master bedroom	\$ 280.00
Filing fee	\$100.00
Less security deposit and accrued interest	(-\$705.28)
Total amount due to the landlord	\$3,329.35

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,329.35**. 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: November 09, 2009.

Dispute Resolution Officer