

## **DECISION**

Dispute Codes      MND,MNR, MNSD, MNDC, FF

### Introduction

This is an application by the Landlord for dispute resolution. The Landlord is seeking a monetary order for damage to the unit, for unpaid rent and utilities, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and the recovery of the filing fee.

Both parties attended by conference call and gave affirmed testimony.

### Issues(s) to be Decided

Is the Landlord entitled to a monetary order?

### Background and Evidence

This Tenancy began on March 1, 2009 and ended on August 31, 2010. It began as a 1 year lease until February 1, 2010 then to a month to month basis thereafter. The monthly rent was \$975.00 payable by the 1<sup>st</sup> of each month and a security deposit of \$487.50 was made at the beginning of tenancy. There is a signed tenancy agreement, but neither party has submitted a complete copy. The Landlord has provided the last page of the signed tenancy agreement, along with the one page addendum that was agreed upon with five additional terms.

The Landlord has submitted a letter from the Tenant dated July 31, 2010 with the Tenant's 30 day notice to vacate the rental unit. The letter specifies that she is holding

back \$487.50 from the August 2010 rent payment to regain her security deposit. The Tenant confirms this and states that the Landlord did not verbally or in writing disagree with the Tenant's intent in the letter. The Landlord states that at no time did he consent to the Tenant applying the security deposit as ½ of the last months rent.

The Landlord is claiming \$128.80 for carpet cleaning services that he incurred from engaging a cleaning service. The Landlord did not complete a condition inspection report for the move-in nor the move-out date. The Landlord has not provided any photographs or evidence as to the condition of the carpets. The Landlord states that the carpet is less than 2 years old. The Tenant states that the carpets were very worn and fraying and that there were stains in the carpet at the beginning of tenancy. The Tenant states that the Landlord was never present at the beginning of her tenancy and that he was not around during the end of the previous tenant's. The Tenant met the previous Tenant upon her move-in and has provided evidence in the way of photographs and comments about the unsatisfactory condition the rental unit was in upon her possession.

The Landlord is seeking costs for the payment of utilities. The Landlord has provided the addendum page of the Tenancy agreement, where it states that the Tenant is responsible for all utilities. The Landlord has provided water utility bills from February 16, 2010 to October 18, 2010 for a total of \$127.85. The Tenant disputes the costs as she moved out and gave back possession to the Landlord on August 31, 2010. The Tenant was only in possession of the rental unit during the last billing cycle for 14 days and feels that she should not be responsible for the other 48 days, especially since new Tenants moved into the unit in September.

The Landlord is seeking costs for a backed up toilet that he removed and used a drain snake to recover a toy figurine in the shape of a knight. The Landlord states this was done during the move out period of the Tenant and that her son admitted that the figurine was his. The Tenant disputes by saying that the previous Tenant had a child and that they could be responsible. The Landlord has stated that the previous Tenant's

child was a 2 year old girl and that she would not be of an age to play with such a toy. The Landlord has submitted a receipt for \$17.52 for parts in removing the toilet and using a drain snake. The Landlord submitted in the form of a note of two quotes for a professional service that would cost \$180.00 and \$152.00 from another plus parts and mileage to be added to the costs. The Landlord submits that for 3 hours of his time to perform this that he charge \$62.48 for labour only plus the parts for a total of \$80.00.

The Landlord has submitted a claim for the replacement of a shower curtain for \$6.00. The Tenant states that when she moved in there was a left over shower curtain from the previous Tenant and that she threw it in the garbage. The Landlord did not provide a new shower curtain to the Tenant upon her possession of the rental unit.

The Landlord is making a claim for the replacement and repair of curtain rods in both bedrooms and for the replacement of a missing curtain rod in the living room. The Landlord has claimed a total expense of \$138.75 for installing a trim board, caulking to fill holes in the walls, installing a curtain rod to replace a missing one in the living room and the installation of new shower curtain. The Landlord has included the labour at 3 ½ hours spent at \$20.00 per hour for the installation of all these things. The Tenant disputes the replacement of a bent curtain rod that she purchased during her tenancy and that the replacement of a curtain rod in the living room is incorrect as there was no current rod on her taking possession of the rental unit. The Tenant states that she has replaced the majority of the curtain rods in the rental unit and left the old ones in the entry shelf as presented in the evidence that she provided.

### Analysis

I am satisfied that both parties during affirmed testimony have properly served upon the other the hearing documents and evidence packages to which they have submitted to the RTB. Both parties agree that hearing packages and evidence were exchanged.

Based upon the evidence presented I find that the Tenant withheld  $\frac{1}{2}$  of the August 2010 rent of \$487.50 without the Landlord's consent. The Landlord has established a claim for unpaid rent for \$487.50.

The Landlord's claim for carpet cleaning costs of \$128.80 are dismissed. The Landlord has not provided any evidence of cleaning required and that the Tenant was negligent and left the rental unit in unsatisfactory condition. The Landlord did not perform a move-in or move-out condition inspection report.

The Landlord's claim for water utilities have been made out. The Tenant does not dispute the responsibility, but that of the share of the bills. The Tenant has only contested the amount for the later portion of her tenancy, specifically the last bill. As such the Landlord has made out the claim for February 16 – August 18, 2010 which totals to \$118.75. The disputed arises from the days August 18 – August 31, 2010. The total bill for \$42.52 for a total of 61 days based upon the Landlord's calculations equals, \$0.69 per day. This equals an averaged pro-rated amount to \$9.10 for the 13 days. The Tenant states that this is unreasonable as the new tenants use more water and that she should not be responsible. I agree and find this reasonable and credit the Tenant with \$2.50. The total water utilities the Tenant is responsible for is \$125.35.

The Landlord's claim for service on a backed up toilet is for \$80.00, which includes the labour and parts cost of \$17.52. Based upon the two quotes provided by the Landlord, I find this a reasonable cost and find that on a balance of probabilities that the Tenant's child was responsible. I award the cost of \$80.00 to the Landlord for the service performed on the toilet.

The Landlord's claim for \$138.75 in replacements for curtain rods and a new shower curtain are not credible. Much of this is evident from the Tenant's evidence provided. The Landlord has not provided any evidence of photographs or damage that were the result of the Tenant's negligence. The Tenant's evidence was not challenged by the Landlord concerning the curtain rods. I find that the Landlord has not established a

claim for the damage and replacement of the curtain rods. I dismiss this portion of the Landlords application.

The Landlord is granted a monetary order for unpaid rent of \$487.50, water utility bills for \$125.35, \$80.00 for service performed on the backed up toilet.

As the Landlord has been substantially successful in his application, I grant the recovery of the \$50.00 filing fee. I grant the Landlord an order under section 67 for the balance due of \$742.85. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The Landlord is granted a monetary order for \$742.85.

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 19, 2010.

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Dispute Resolution Officer