



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for damages and unpaid rent, 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 one of the tenants, was done in accordance with section 89 of the *Act*; the landlord testifies that he served one of the tenants in person at his place of work. The other tenant has not been served with the hearing documents.

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.

Preliminary issues

As only one of the tenants has been served with notice of this hearing I have amended the landlords' application to indicate that only the one tenant was served and as such the Decision and Order made will be in the name of the tenant who was served with Notice of the hearing.

The Residential Tenancy Policy Guidelines #13 refers to the rights and responsibilities of co-tenants and states co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means a landlord can recover the full amount of rent, utilities or damages

from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owed to the landlord

Issue(s) to be Decided

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

Background and Evidence

The landlord testifies that this month to month tenancy started on June 15, 2009 and ended on September 29, 2010 when the tenants moved from the rental unit. Rent for this unit was \$750.00 per month and was due on the 1st day of each month. The tenants' paid a security deposit of \$375.00 on June 15, 2009.

The landlord testifies that the tenants gave written notice to end the tenancy on September 14, 2010. The effective date they gave to end the tenancy was September 30, 2010. The landlord was unable to re-rent the unit for October, 2010 and seeks to recover rent of \$750.00 for October, 2010 as the tenants did not give him the correct Notice period.

The landlord states that the tenants caused damage to the rental unit. He claims that before they moved into the unit it had been renovated with new laminate flooring. After the tenants vacated the landlord found scratches and gouges on the flooring. The landlord also states this was a non-smoking unit and the tenants had smoked in the unit. The landlord states he had to wash and repaint the ceiling and walls due to the cigarette smoke. The landlord seeks to recover \$375.00 for his labour in making these repairs and cleaning. The landlord has provided some photographs of scratches on the flooring. He has also provided a receipt for paint.

The landlord testifies that the tenants left the toilet in such a filthy condition he was unable to clean it and had to purchase a new toilet at a cost of \$100.00. The landlord seeks to recover this amount from the tenants. The landlord has provided photographs of the toilet.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

Section 45 of the *Act* states a tenant may end a periodic tenancy by giving the landlord Notice to end the tenancy not earlier than one month after the date the landlord receives the Notice. The notice must be given on the day before the day that rent is due under the tenancy agreement (my interpretation). In this instance rent was due on the first of each month and the tenants gave the landlord only two weeks' notice on the 15th of September. Consequently, the earliest the tenancy could have ended would have been October 31, 2010 and the landlord is therefore entitled to recover rent for October, 2010 to the sum of **\$750.00** pursuant to section 67 of the *Act*.

With regard to the landlords claim for damages to the rental unit; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for damage to the floor, walls, ceiling and toilet does not meet all the components of the above test. The landlord has not proven that the damage was a result of the actions or neglect of the tenants during the tenancy as he has not provided a copy of the move in condition inspection and did not complete a move out condition inspection. The landlord has not provided verification of the actual cost to rectify the damage or replace the toilet. Consequently, this section of the landlords claim is dismissed.

I Order the landlord to keep the security deposit of \$375.00 pursuant to section 38 (4)(b) of the *Act*. I further find the landlord is entitled to recover his filing fee from the tenant of **\$50.00** pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the following amount.

Unpaid rent for October, 2010	\$750.00
Subtotal	\$375.00
Plus filing fee	\$50.00
Total amount due to the landlord	\$425.00

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 **\$425.00**. 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 09, 2011.

Residential Tenancy Branch