



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order to retain the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing.

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

Preliminary Matter

At the onset of the Hearing, the Landlord stated that he wished to claim for unpaid rent in the application in addition to the claim against the security deposit. The Landlord states that this claim was originally included in the application but was deleted upon information received by the Residential Tenancy Branch. The Landlord included a statement in the materials served with the Hearing package to the Tenant that includes the claim for the rent. Given that the Tenant received notice that the Landlord was claiming for unpaid rent in addition to damages to the unit and given that the Landlord has merit to the claim for unpaid rent, I amend the application to include a claim for unpaid rent.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began in October 2000 and ended on July 10, 2011. Rent in the amount of \$910.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$325.00. On June 29, 2011, the Tenant gave a one week notice to end the tenancy and vacated the unit on July 10, 2011. The Tenant did not pay rent for July 2011 and left the unit unclean. The Landlord did not complete a move-out inspection. The Landlord incurred the cost of \$190.00 for cleaning the unit and re-rented the unit for August 2011. The Landlord states that he does not wish to claim for any sum over the amount of the security deposit and interest.

Analysis

Section 24 of the Act provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. As the Landlord did not complete a move-out inspection, I find that the Landlord no longer has a right to claim against the security deposit for the cleaning of the unit and I dismiss this part of the claim.

Where a Tenant wishes to end a month to month tenancy, the Act provides as follows:

- 45** (1) 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.

Given the undisputed evidence of the Landlord, I find that the Tenant failed to provide appropriate notice to the Landlord to end the tenancy, that rent was payable for the month of July 2011 and that the Tenant failed to pay this rent. I find therefore that the

Landlord is entitled to the amount of \$910.00 in unpaid rent. As the Landlord still holds the security deposit, this amount plus interest may be set off against the amount owing to the Landlord. As the Landlord does not wish to obtain a monetary order over the amount of the security deposit plus interest in the amount of **\$348.36**, I order the Landlord to retain the amount of \$346.36 in full satisfaction of the claim herein.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$348.36 in full satisfaction of the claim.

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: October 17, 2011.

Residential Tenancy Branch