



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

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 October 07, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn 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.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for:
 - I. Unpaid rent
 - II. Damage to the unit site or property
 - III. Money owed or compensation for damage or loss
- Is the landlord entitled to keep all or part of the tenant's security deposit?

Background and Evidence

The landlord testifies that this tenancy started as a fixed term tenancy on January 01, 2011 and is due to expire on December 31, 2011. The tenant moved from the rental unit on October 02, 2011. Rent for this unit was \$975.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$487.50 On December 01, 2010.

The landlord testifies that a move in condition inspection was completed at the start of the tenancy but as the tenant abandoned the unit the landlord was unable to conduct the move out inspection with the tenant. The landlord testifies that the tenant advised the caretaker of the building that the tenant would be moving back to the address given on his application. The landlord has therefore used this address when serving the tenant and the Canada Post tracking information provided by the landlord shows the tenant signed for the registered mail at this address.

The landlord testifies that the tenant failed to pay rent for October, 2011. The tenant had a credit on his account of \$37.50 therefore the landlord seeks to recover the balance in rent of \$937.50. The landlord states the unit was re-rented for November 01, 2011 therefore they do not wish to pursue the tenant for any loss of rental income to the end of fixed term lease.

The landlord testifies that the tenant failed to clean the suite before he moved out and the landlord seeks to recover the sum of \$120.00 for this cleaning to be carried out. The

landlord has provided a copy of the cleaning receipt detailing the work that was required.

The landlord testifies that the tenant also failed to clean the carpets at the end of the tenancy and the carpets were left in an unclean condition. The landlord seeks to recover the sum of \$95.00 and has provided a copy of the receipt for this work which details that the total cost for carpet cleaning was \$235.20.

The landlord states that in the tenancy agreement it is documented that the landlord will charge the tenant a fee of \$350.00 if a tenant breaks the lease. This is a liquidated damages fee to cover the costs of finding a new tenant. The landlord seeks to recover this cost from the tenant.

The landlord has requested an Order to keep the tenants security deposit to offset against the unpaid rent and to recover the \$50.00 filing fee from the tenant.

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 26 of the Act states: A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant would be aware that rent was due on October 01, 2011 and failed to pay this rent and abandoned the suite on October 02, 2011. Consequently as this was a fixed term lease that would not have expired until December 31, 2011 the landlord is entitled

to recover a loss of rental income from the tenant up to the end of the fixed term or until the unit was re-rented. In this case the unit was re-rented for November 01, 2011. Therefore I uphold the landlords claim to recover rent for October, 2011 of **\$937.50**.

With regard to the cleaning of the unit; s. 32 of the *Act* states: *A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

This section of the *Act* also refers to the tenant's responsibility to ensure the unit is left in a clean condition at the end of the tenancy. The landlord's undisputed testimony declares that the tenant did not clean the rental unit and the landlord has provided evidence to support his claim that the unit had to be cleaned at a cost of **\$120.00** including \$18.00 for cleaning supplies. I further find the landlords undisputed testimony that the tenant left the carpets in an unclean condition is supported by the landlords invoice for carpet cleaning to the sum of \$235.20 although the landlord only seeks to recover the amount of **\$95.00** for this work.

In regard to the landlords claim for liquidated damages because the tenant broke the lease before the end of the term; I find the tenant was aware that the landlord would charge the tenant the sum of \$350.00 if the tenant broke the lease as it is documented in the tenancy agreement signed by both parties. Consequently, it is my decision that this is a reasonable sum for the landlord to charge a tenant and as a result the landlord has established his claim for **\$350.00** because the tenant broke the lease.

It is my decision that the landlord is entitled to keep the tenants security deposit of **\$487.50** pursuant to s. 38(4)(b) of the *Act*.

As the landlord has successful with his claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. The landlord will receive a Monetary Order for the following amounts:

Loss of rental income for October, 2011	\$937.50
Cleaning	\$120.00
Carpet cleaning	95.00
Liquidated damages	\$350.00
Subtotal	\$1,502.50
Less security deposit	(-\$487.50)
Plus filing fee	\$50.00
Total amount due to the landlord	\$1,065.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,065.00**. 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: December 29, 2011.

Residential Tenancy Branch