



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Tenants: MNDC MNSD
For the Landlord: MNR MNSD FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenants applied for a return of all or part of a pet damage deposit or security deposit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The landlord applied to keep all or part of a pet damage deposit or security deposit, for a monetary order for unpaid rent, and to recover the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The tenant spoke limited English but indicated throughout the hearing that although he did not have an agent, he did understand what was being said. To confirm his understanding the tenant was asked throughout the hearing whether he understood and extra time was taken with the tenant to ensure his understanding throughout the proceeding.

At the start of the hearing, the tenant requested to reduce the amount being claimed in their application from \$765.00 to \$382.50. Pursuant to section 64 of the *Act*, I grant the tenant's request as this decision would not prejudice the landlord.

The agents for the landlord affirmed during the hearing that the landlord received \$288.00 from the new tenants who were able to move into the rental unit on April 21, 2012. As a result, the agents confirmed that they were reducing their monetary claim by \$288.00 from \$992.15 to \$704.15. Pursuant to section 64 of the *Act*, I grant the landlord's amendment to their monetary claim as this decision would not prejudice the tenants.

Issues to be Decided

- Should the security deposit be returned to the tenants or be retained by the landlord?
- Should the tenants be granted a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Should the landlord be granted a monetary order for unpaid rent?
- Should the landlord recover the filing fee?

Background and Evidence

The tenant did not submit evidence as part of their application. A copy of the tenancy agreement was submitted as evidence by the landlord. Rent was due on the first day of each month in the amount of \$765.00. The fixed term tenancy began on February 1, 2011 and reverted to a month to month tenancy on January 31, 2012. The tenants paid \$382.50 as a security deposit at the start of the tenancy.

The agents for the landlord affirmed that the tenants provided verbal notice on March 6, 2012, indicating that they would be vacating the rental unit on March 31, 2012. The landlord testified that on March 9, 2012, the tenants followed up with written notice confirming that they would be vacating the rental unit on March 31, 2012. Both parties agree that the tenants vacated the rental unit on March 31, 2012.

A copy of the Condition Inspection Report was submitted as evidence. The move-in condition inspection was completed on February 1, 2011, and the move-out inspection was completed on April 1, 2012. The tenant confirmed that he was present for both

inspections and signed the condition inspection report stating that he agreed that the report fairly represented the condition of the rental unit.

The landlord's amended monetary claim of \$704.15 consists of the following:

Suite carpet cleaning (receipt provided)	\$84.00
Drape cleaning (receipt provided)	\$18.15
April 2012 rent	\$765.00
Suite cleaning (2.5 hours @ \$15 per hour X 2 persons)	\$75.00
Filing fee	\$50.00
Less portion of April 2012 recovered from new tenants (April 21 to April 30, 2012)	(\$288.00)
TOTAL	\$704.15

The tenants did not sign over a portion of the security deposit and the tenant's have applied for the full return of their security deposit. The tenant stated that he left the rental unit in "super clean" condition.

The agent for the landlord stated that the rental unit was in need of general cleaning, carpet cleaning and drape cleaning. The landlord provided copies of invoices, receipts, and correspondence. All relevant evidence has been considered in this Decision.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Tenants' claim for money owed or compensation for damage or loss– The tenant did not provide any documentary evidence or oral testimony to support this portion of their claim. As a result, **I dismiss** this portion of their application without leave to reapply due to insufficient evidence.

Claim for portion of April 2012 rent– The agents for the landlord testified that rent in the amount of \$765.00 was not paid for April 2012. The agent stated that they did not receive written notice from the tenants until March 9, 2012 and as a result, the tenants were expected to pay rent for April 2012.

Section 45 of the *Act*, states:

Tenant's notice

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.

Based on the testimony provided, I find the tenants breached section 45 of the *Act*. The tenants did not provide written notice to the landlord that is not earlier than one month after the landlord receives the notice, and 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.

Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have breached a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. **I find** the landlord has met the burden of proof and **I award** the landlord a monetary claim for the balance in the amount of **\$477.00** for unpaid rent for April 2012 after deducting the \$288.00 received from the new tenants by the landlord for the dates of April 21 to April 30, 2012.

The landlord is holding a security deposit of \$382.50, which was paid by the tenants on February 1, 2011. The security deposit has accrued no interest since that date.

Claim for carpet, drape and rental unit cleaning – During the hearing, the tenant affirmed that by signing the move-out condition inspection report he agreed with the condition of the rental unit at the end of the tenancy. The move-out condition inspection report indicated dirty carpets, dirty drapes and other areas in the rental unit that required general cleaning. Therefore, **I award** the landlord a monetary claim of **\$177.15** for cleaning costs pursuant to section 67 of the *Act*, consisting of \$84.00 for carpet cleaning, \$18.15 for drape cleaning, and \$75 for rental unit cleaning calculated at 2.5 hours X 2 persons at \$15.00 per hour.

As the landlord was successful in their application, I **grant** the recovery of the filing fee in the amount of **\$50.00**.

Monetary Order – I **find** that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit as follows:

April 2012 rent	\$765.00
Carpet cleaning	\$84.00
Drape cleaning	\$18.15
Suite cleaning	\$75.00
Filing fee	\$50.00
Less rent for April 21 to April 30, 2012 received from new tenant	(\$288.00)
Subtotal	\$704.15
Less security deposit	(\$382.50)
TOTAL	\$321.65

Conclusion

I dismiss the tenant's claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement due to insufficient evidence.

I find that the landlord has established a total monetary claim of **\$704.15** as indicated above. I order that the landlord retain the security deposit of \$382.50 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$321.65**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: July 25, 2012

Residential Tenancy Branch