



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, FF

Introduction

This is an application by the landlord for a monetary order for money owed or compensation for damages or loss under the Act, regulation or tenancy agreement.

The application is also inclusive of recovery of the filing fee from the tenant, in the amount of \$100 for the cost of this application. Despite having been served with the application for dispute resolution and notice of hearing by *registered mail* in compliance with Section 89 of the Act, the tenant did not participate in the conference call hearing.

The landlord's claim is as follows:

1. Loss of revenue for balance of lease at \$1600 per month	\$12,800.00
2. Carpet Cleaning	\$ 75.00
3. Repairs to outdoor pool	\$ 232.03
4. fireplace seal replacement	\$ 13.44
5. Garbage disposal fees	\$ 91.43

Total claim \$ 13,211.90

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on July 1, 2008 as a fixed term tenancy for a period of (one) 1 year. The amount of rent stated in the lease is \$1600 per month due the 1st. of each month.. The landlord collected a security deposit in the amount of \$800 at the outset of the tenancy, and retains this amount to this date.

The tenant failed to pay the rent for the month of October 2008, on October 1st. The landlord determined to evict the tenant for unpaid rent with a handwritten notice dated October 1, 2008 stating that, "This is your 15 day eviction notice as per Lease Agreement Contract that you signed. The rent, in the amount of \$1600 has not been paid in full on the first of the month as per contract etc."

The landlord claims that the tenant likely moved at the end of October 2008, leaving behind an amount of debris and garbage about the property. The carpeting was dirty and required cleaning. The outdoor pool plumbing was damaged and required repair, and the fireplace gasket / seal had been damaged and required replacement.

The landlord determined not to re-advertise the rental unit or obtain new tenants. Instead, after the required remedies and repairs to the property, the landlord determined to move into the rental unit himself on November 30, 2008.

Analysis

At this juncture it is moot that the landlord served the tenant with an illegal notice to end the tenancy for unpaid rent, contrary to Section 44 of the Residential Tenancy Act (The Act).

Section 7 of the Act guides landlords and tenants in their determination and burden of proof for damages and loss. Essentially, the burden of proving loss and damage in this matter rests with the landlord that he acted reasonably to mitigate or minimize losses of revenue.

The Act reads as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The landlord chose not to pursue obtaining other tenants, after the tenant moved out. The landlord chose to occupy the rental unit himself. In this regard, the landlord determined to minimize revenue loss by taking the rental unit out of the rental market, so is precluded from now claiming losses of revenue for the unit. Therefore, I dismiss this portion of the landlord's claim

As to the remainder of the landlord's claim. The landlord provided receipts for the repairs, cleaning and garbage disposal, in the total amount of \$411.90. I find the landlord is entitled to this amount of \$411.90. As well, as the landlord was only partially successful in his application in recovering an amount under \$5000, I grant the landlord partial recovery of his filing fee in the amount of \$50 for a total entitlement of **\$461.90**

Conclusion

I order that the landlord can retain the amount of **\$461.90** from the security deposit he currently holds.

Dated February 27, 2009