

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes:

MND, MNDC, MNSD, FF.

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for the cost of repairs, loss of income and punitive damages, pursuant to Section 67 and for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the return of her security deposit, pursuant to Section 38;

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary to recover the cost of repairs, loss of income, punitive damages and the filing fee? Is the tenant entitled to the return of her security deposit?

Background and Evidence

The tenancy started on September 01, 2008 for a fixed term of one year. The rent was \$1675, due on the first of each month and did not include utilities. On November 28, 2008, the tenant gave the landlord notice to end tenancy effective January 31, 2009 and moved out on January 31, 2009.

Landlord's Application

The landlord stated that he advertised the availability of the suite on Craig's list, immediately after he received the tenant's notice to end tenancy. In addition he advertised in the local paper and has filed invoices indicating that he incurred a cost of \$74.83 in advertising.

The advertisements indicate that the monthly rent is \$1,600.00 plus utilities. The tenant was paying \$1675.00 plus utilities. The landlord stated that he lowered the rent because of the current troubled economy and to attract a tenant as early as possible.

A renter was found effective February 01, 2009 for a fixed term of four months at the rate of \$1,600.00 per month. The tenant asked the landlord to provide cable vision. The landlord is claiming costs associated with the income differential due to reduced rent (300.00) and the cost of cablevision (\$240.00) for the term of new tenancy.

The landlord is also claiming other costs associated with finding a new tenant, which include \$50.00 for vehicle costs and \$200.00 for administrative costs like paper, printing, postage and time to field calls and conduct showings.

The landlord stated that the tenant installed a security system and had it uninstalled prior to moving out. The landlord alleged that the tenant posed as the owner of the property when dealing with the alarm company. The installer used the power supply to the refrigerator as a source for the supply to the alarm system. The landlord has claimed \$400.00 for wall repair and for the cost to hire an electrician to inspect the wiring. The landlord has provided photographs of damage to the wall which consists of five small holes that are filled with putty.

The landlord is also claiming rent for the balance of the tenancy which would have ended on August 31, 2009. The new tenant has signed a fixed term lease which ends on May 31, 2009 and the landlord is claiming loss of income for the remainder of the lease (three months), in the amount of \$5025.00.

The landlord has filed copies of internet conversations on a popular website, between the tenant and her friends. The landlord describes the conversations as slanderous and threatening and is claiming \$5000.00 in punitive and non-pecuniary damages.

The landlord is claiming the following:

1.	Advertising	\$74.83
2.	Rent differential for four months @ \$75	\$300.00
3.	Cable vision for four months @ \$60.00	\$240.00
4.	Fuel expense	\$50.00
5.	Administrative costs	\$200.00
6.	Repair to wall	\$400.00
7.	Punitive and non-pecuniary damages	\$5000.00
8.	Balance of lease – rent for three months	\$5025.00
9.	Filing fee	\$100.00
	Total	\$11389.83

Tenant's Application

The tenant testified that she gave the landlord two months notice to end the tenancy for financial reasons. She stated that she provided accurate information to the alarm company re the ownership of the property and has work order slips that the company provided her with for the installation and removal of the system. The tenant stated that the electrical wiring work was done by the alarm company's personnel.

The tenant argued that she applied putty to the small holes in the wall which became visible when the alarm panel was removed and a paint touch up was all that was required to complete the job. The tenant did not agree with the landlord's claim of \$400.00 to fix the wall and inspect the electrical wiring.

The tenant is claiming the return of her security deposit.

Analysis

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

The claimant bears the burden of establishing each claim on the balance of probabilities. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlord's claim for advertising and the rent differential meets the components of the above test. Therefore, I find that the landlord is entitled to \$74.83 for advertising costs and \$300.00 for the rent differential.

The landlord has not filed any evidence to support his claim for Cable vision, fuel expenses, administrative costs and repair to the wall. Therefore the landlord's claim for these items is dismissed.

Regarding the landlord's claim for punitive and non-pecuniary damages, I do not have the authority to award punitive damages in order to punish the respondent.

Non-pecuniary damages are measured by the wronged person's suffering and must be sufficiently significant in depth or duration or both, that they represent a significant influence on the wronged person's life. The landlord has not established that the tenant's conversations with her friends on the internet caused him any additional out of pocket expenses or significantly influenced his life enough to warrant an award of \$5000.00 and therefore his claim is dismissed.

Regarding the landlord's claim for rent for the balance of the tenant's lease, the landlord is entitled to damages for loss of income for the un-expired term of the tenant's lease. However, the landlord's claim is subject to the statutory duty to mitigate the loss by attempting to re-rent the unit. In this case, the landlord has found a tenant for part of the unexpired portion of the tenant's term and may make application for loss of income, if he is unable to rent for the remainder of the term, after he has incurred the loss. For this reason, the landlord is not entitled to \$5025.00 for the months of June, July and August 2009, at this time.

Overall, the landlord has established a claim for \$374.83. I find that the landlord is also entitled to \$100.00 for the filing fee.

I order that the landlord retain \$474.83 from the security deposit of \$837.50 and interest of \$4.26 in satisfaction of the claim and I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$366.93. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$366.93**.

Dated April 09, 2009.

Dispute Resolution Officer