

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *MNSD, MNR, FF.*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- A monetary order for loss of income and liquidated damages due to an early end to a fixed term tenancy, on the part of the tenant, pursuant to Section 67;
- An order to retain the security deposit pursuant to Section 38;
- An order to recover the cost of filing the Application for Arbitration pursuant to Section 72.

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

The landlord advised me that the tenant had requested the landlord to use her security deposit towards rent for February and the landlord had agreed to do so. Therefore, the tenant has already received her security deposit and the landlord's application to retain it, is now moot.

Issues to be decided

Is the landlord entitled to a monetary order for compensation for loss under the *Act* and to recover the filing fee?

Background and Evidence

The tenancy started on July 11, 2008 for a fixed term of 12 months. The monthly rent was \$1275.00 due on the first of each month. On January 27, 2009 the tenant gave the landlord a 30 day notice to end the tenancy and moved out on February 28, 2009.

The landlord stated that upon receiving the tenant's notice, he advertised the vacancy on line, but due to the current economic situation, he did not receive any response. In

order to find a tenant as soon as possible, the landlord lowered the rent and rented the unit to the first applicant. The new tenant moved in on April 01, 2009.

The tenant stated that her reason for ending the tenancy was that she did not feel safe and was therefore unable to sleep well at night. In mid August 2008, the tenant advised the landlord that construction workers were entering her suite in her absence. The landlord contacted the Strata office and made arrangements to have the locks changed.

The tenant stated that she had also reported the presence of a ladder underneath her balcony and had used it herself to get into her rental unit. The tenant stated that she had reported it to the landlord several times before it was removed. The landlord argued that he communicated with the strata regarding this matter and the delay resulted from the strata removing a ladder at a different location on the property, in error.

Lastly, the tenant complained about her immediate neighbours partying all night and causing noise disturbances. Upon reporting it to the landlord, the landlord requested the tenant to provide him with a written complaint along with a log of the disturbances, to enable him to address the issue with the Strata Council. The tenant did not comply with the landlord's request.

The landlord is claiming the following costs:

1.	Rent for March	\$1275.00
2.	Late fee	\$25.00
3.	Cost to place new tenant	\$574.86
4.	Loss of income due to rent differential	\$720.00
	Total	\$2594.86

Analysis

Section 45 of the *Residential Tenancy Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

The tenant's reasons for ending the tenancy include feeling unsafe and unable to sleep well at night. Based on the testimony of both parties, I find that the landlord was diligent in addressing the concerns and complaints of the tenant. The delays that occurred were due to the tardy communication between the landlord and the Strata Council. Therefore, I find that the tenant has not established that the landlord was negligent in his duties as a landlord. I also find that the landlord did not give the tenant cause to end the tenancy.

Residential tenancy Policy Guideline #4 states that a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance, the damages payable in the event of a breach of the tenancy agreement. In this particular case, I find that the tenant breached the tenancy agreement by ending the fixed term tenancy prior to end of the term thereby causing the landlord to incur a loss of income.

The landlord mitigated his losses by advertising the vacancy and subsequently finding a tenant.

I find that the landlord is entitled to be awarded an amount sufficient to put him in the same position as if the tenant had not breached the agreement. Accordingly, I find that the landlord is entitled to loss of income for March, costs to find a new tenant and loss of income due to the income differential for a total of \$2569.86.

A clause in the tenancy agreement with regard to liquidated damages states that if the tenant terminates the tenancy before the date specified, then the landlord shall charge and the tenant agrees to pay the sum of \$2,500.00.

Residential tenancy Policy Guideline #4 states that a such a clause will function as an upper limit on the damages payable resulting from the breach, even though the actual damages may have exceeded the amount set out in the clause.

Accordingly, I find that the landlord has established a claim for \$2,500.00. Since the landlord has proven his case, he is entitled to the recover of his filing fee in the amount of \$50.00.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$2,550.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order under Section 67 of the *Residential Tenancy Act*, in the amount of **\$2,550.00**.

Dated May 15, 2009.

Dispute Resolution Officer