



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order for unpaid rent and utilities, for damages to the rental unit, for loss or damage under the Act or tenancy agreement and to recover the filing fee for this proceeding. The landlord also applied to keep all or part of the security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the tenant by registered mail on April 16, 2009. The tenant confirmed he had received them.

Both parties appeared, gave their testimony, were provided the opportunity to present evidence, make submissions and to cross-examine the other party. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has the tenant breached an agreement with the landlord?
- Is the landlord entitled to a Monetary Order for loss of income?
- Has the landlord provided sufficient evidence that the damage is caused by actions or neglect of the tenant?
- Has the landlord provided sufficient evidence of the actual amount required to compensate him for the claimed loss or to rectify the damage?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Did the landlord follow the regulations with regard to the condition inspection reports?

- Whether the landlord is entitled to a Monetary Order to recover the filing fee?

Background and Evidence

This was a fixed term tenancy for one year which started on July 01, 2007. The tenant moved out on November 13, 2007 effectively ending the tenancy after four months.

The landlord claims that before the tenancy began she had cleaned the rental unit and had it painted. She was provided receipts indicating the painting work that was carried out. A move in condition inspection report was completed the day after the tenants moved in on July 02, 2007. This report was signed by the landlord and tenant. The tenant gave the landlords agent six post dated cheques for rent. The cheque for November 2007 was returned to the landlord as it had been stopped. The landlord approached the tenant about the rent for November and was told the tenant was moving out. The landlord claims she asked the tenant to carry out a move out inspection with her but he refused and the condition inspection was completed by the landlord and has not been signed by the tenant. The landlord states that she could not send the tenant a copy as she did not have his forwarding address.

The landlords claim consists of loss of income for November and December, 2007 and January and February, 2008. The landlord made many attempts to re-rent the property but was unable to rent it until March 01, 2008. The landlord also claims \$500.00 for the services of a rental agent to re-rent the property. The landlord also claims \$7.00 fee for the returned cheque, unpaid utility bills for September to November, 2007 and damages caused by the tenant to a towel rail, burnt bulbs and damage to blinds, damage to walls and kitchen surfaces and cleaning of the suite.

The tenant disputes the landlords' claims. The tenant states that he gave the landlord six post dated cheques for rent payments starting in June, 2007. The tenant signed a tenancy

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agreement stating that the tenancy was a fixed term tenancy starting in July, 2007. The tenant paid his security deposit on May 15, 2007 and was of the understanding that the term started on June 01, 2009. The tenant has provided bank statements as evidence that his rent was paid for June 2007. The tenant claims that he was told by the landlords' rental agent that he could end the tenancy after six months if he gave the landlord 60 days notice. The tenant claims that he ended the tenancy early because the tenants in the downstairs unit smoked marijuana. The tenant states that he was worried about the effect this environment would have on his children so after speaking to the RMCP he decided to move out. The tenant gave the landlord verbal notice and also sent her a short letter dated August 30, 2007 indicating that he would be moving out on November 01, 2007

The tenant also disputes the landlords claim that he had caused damage to the rental property. He states that he was not living in British Columbia before he moved into the property so asked his nephew to go to the house and collect the keys and carry out an inspection with the landlord including taking any photographs to proof the condition of the house. The landlord refused to allow the tenants nephew to carry out this inspection. When the tenant arrived at the property his family and friends had to clean it again as it was not up to their standards of cleanliness. The tenant claims that he left the property in a good state of cleanliness and repair and that the damages the landlord has photographed were not caused by the tenants. He questions when the pictures were taken as some of them match the items marked on the move in condition inspection report such as burnt out bulbs and paint on office floor. The tenant states that he never received a copy of either report until they came in the hearing package. The tenant disputes the utility bills in the landlords claim. The tenant states that he gave her money to cover the bills based on the amount of the previous bill plus an extra \$35.00 if it was not enough.

Analysis

I have carefully considered all the evidence before me, including the evidence of both parties and written evidence submitted by both parties' witnesses. Based on the inconsistency between the tenants' evidence and the evidence of the landlord I find I can place very little weight on the evidence submitted by the landlord respecting the damages and cleaning to the property. The tenant claims that these damages were not caused by him and that he left the rental unit clean and in a good state of repair when he moved from the property. The landlords' photographs do not show the date they were taken and show some of the damages mentioned on the move in condition inspection report. The landlord did not give the tenant two opportunities to take part in a move out condition inspection. The landlord has filled in the move out condition report but has failed to date or sign this and did not give the tenants a copy of this within 15 days of completion pursuant to section 35 of the *Act*. Therefore I dismiss this portion of the landlords claim.

I find that the tenant did sign a tenancy agreement for one year although the dates of the agreement are in dispute. I find in favor of the tenants claim that the agreement started from June 01, 2007 not July 01, 2007 as claimed by the landlord. The tenant paid his rent for the month of June and the landlord accepted this rent payment. The tenant may have had an agreement from the landlords' rental agent to end the tenancy after six months but there is no written evidence to this effect and the tenant did knowingly sign a tenancy agreement which clearly states that the tenancy is for one year. Section 45(2) of the *Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. Therefore, I find the tenant did end the tenancy prematurely. The damages to which a landlord is entitled is an amount sufficient to compensate the landlord for any loss of rent up to the earliest time the tenant could have legally ended the tenancy. I find the landlord made every attempt to re-rent the property but was unable to do so until

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March 01, 2008. The tenant is liable for the landlords' loss of income up to the date the landlord was able to re-rent the property of \$6,400.00.

The evidence presented by the tenant about the other tenants in the property smoking marijuana does not have any bearing on this hearing.

The tenant is unable to provide any evidence to support his claim that he paid the landlord cash for his share of the utility bills for September to November, 2007. Therefore, I find the tenant owes utilities to the landlord to the Amount of \$401.34.

I find the landlord is able to recover \$7.00 from the tenant for the bank charges for the cost of the returned cheque. I also order the landlord pursuant to section 38(4) of the Act to keep the tenant's security deposit and accrued interest in partial payment towards the loss of income.

I find that the landlords claim for \$500.00 for the services of the rental agent is dismissed. The landlord has chosen to use the services of a rental agent and would have had to pay this fee at the natural end to the tenancy. Therefore, the tenant is not responsible for these fees. As the landlord has been partially successful in this matter they are entitled to recover their filing fee from the tenant of \$100.00. A Monetary Order will be issued to the landlord for the following amount:

Loss of rental income	\$6,400.00
Unpaid utilities	\$401.34
Filing fee	\$100.00
Less security deposit and accrued interest	(-\$818.14)
Total amount due to the landlord	\$6,090.20

Conclusion



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I HEREBY FIND in favor of most of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$6,090.20**. 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: June 29, 2009.

Dispute Resolution Officer