

DECISION

Dispute Codes MNDC, MNR, FF

Introduction

This hearing dealt with an application by the Landlord for an order for monetary compensation arising from the Tenant breaking a fixed term lease early, for NSF fees, and for the return of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Did the Tenant breach the term lease, entitling the Landlord to monetary compensation?

Background and Evidence

The Landlord and the Tenant entered into a 10 month fixed term lease, with a monthly rent of \$1,260.00. On October 30, 2008, the Tenant signed the tenancy agreement. He provided the Landlord with a security deposit of \$630.00 on October 30, 2008.

During the course of the tenancy the Tenant experienced problems arising from the building location and the high level of criminal activity going on in this area. The Tenant had damage done to his car on more than one occasion, including an instance where the car was jacked up on blocks and the wheels and tires stolen. The Tenant discussed these problems with the Landlord. He claims the Landlord did not caution him about the troubles in the building or area prior to entering the tenancy agreement.

In March of 2009, the Tenant gave the Landlord verbal notice, then an email, that he was vacating the unit. The Tenant tried to find other occupants for the rental unit, but was unable to do this. When he vacated the rental unit the Tenant told the Landlord he could keep his security deposit. The Tenant moved out before the end of March 2009. In February of 2009, the Tenant spent \$1,465.00 of his own money to fix the walls and re-paint the unit.

The Agent for the Landlord testified that the rental unit was occupied by another renter on May 16, 2009. Therefore, the Landlord claims for loss of rent for April and half of May 2009, of \$1,890.00.

The Landlord also tried to cash two post dated cheques for April and May of 2009. He claims the NSF fees for the two cheques in the amount of \$70.00.

The Landlord also claims \$300.00 for cleaning the rental unit and \$50.00 for a parking pass.

The Agent for the Landlord did not remember the dates he started advertising for the rental unit. The Landlord did not provide evidence of these ads.

Analysis

Based on the foregoing, the affirmed testimony and evidence provided, and on a balance of probabilities, I find as follows:

I find the Tenant breached the Act when he vacated the unit prior to the end of the fixed term lease. Under the Act, the Tenant may not end a fixed term tenancy unless specific processes are followed, such as giving prior written notice that he felt the Landlord had breached a fundamental term of the tenancy agreement, and an opportunity to rectify the problem.

As for monetary compensation, I find the Landlord is entitled to one month of lost rent due to the Tenant's breach, in the amount of **\$1,260.00**

I dismiss all the other portions of the Landlord's claim, as I find that there is insufficient evidence to support these, as described below.

The onus to prove the case is on the Applicant, or Landlord, in this instance. This is done by providing sufficient evidence to persuade the decision maker of the validity of the claim.

I do not award the Landlord for half of May, as the Landlord did not provide sufficient evidence of the attempts to mitigate the loss of rent, such as copies of ads or bills incurred for advertising. Under the Act, the Landlord has a duty to mitigate the loss caused by the Tenant and there is insufficient evidence of this.

I dismiss the claim for \$300.00, as there is insufficient evidence of the condition of the unit when it was vacated by the Tenant. The Landlord did not perform or submit in evidence an outgoing condition inspection report, nor were there pictures taken, or any other evidence provided of the condition of the unit. The Landlord simply submitted a bill for cleaning.

I dismiss the claim of \$70.00 for bank fees, as these are more than the regulation allows and since Landlord failed to provide sufficient evidence, such as bank bills, showing this was the amount charged by the bank. For the same reason, insufficient evidence, I dismiss the claim of \$50.00 for a parking pass.

Therefore, I find that the Landlord has established a total monetary claim of **\$1,310.00**, comprised of \$1,260.00 for one month rent and the \$50.00 fee paid by the Landlord for this application.

The Landlord may retain the security deposit and interest of **\$631.63** in partial satisfaction of the claim, and I grant an order for the balance due of **\$678.37**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court

Conclusion

The Tenant breached the Act by ending a fixed term tenancy early.

The onus to prove monetary losses occurring from the breach is on the Landlord. The Landlord had insufficient evidence to prove there was an attempt to mitigate these losses or to support many of the claims made.

The Landlord is granted one month of rent and is allowed to retain the security deposit and interest in partial satisfaction of the claim. The Landlord has been granted an order for the balance due.

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: September 21, 2009.

Dispute Resolution Officer