

DECISION

Dispute Codes: *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 loss of income, advertising costs, and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. The tenant applied for the return of her security and pet deposits, compensation for the increased rent and damage deposit at the new rental unit, cost of moving and the filing fee.

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

At the start of the hearing the landlord requested that the amount of his monetary claim be amended to \$1,389.55 from his initial application for \$2,700.00.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, advertising costs and the filing fee? Is the tenant entitled to compensation, the return of her security and pet deposits and the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement on March 07, 2010 for a tenancy that was due to start on April 01, 2010 for a fixed term ending June 30, 2010. The tenant paid a security deposit and a pet deposit for a total of \$1,200.00.

The tenant requested the landlord to allow her to move in on March 31 and the landlord agreed. The landlord stated that the prior tenants had hired cleaning services for that

day and during his discussion with the tenant she advised him that it did not matter as she would be cleaning the unit herself. The tenant did not dispute this.

The tenant stated that she arrived at the unit on March 31 and was requested to wait outside while the landlord finished the move out inspection with the outgoing tenants. She stated that he appeared upset and admitted to her that the unit was not as clean as he expected it to be. The tenant stated that when she inspected the unit, it was dirty and unsafe for her family. She decided not to move in. The landlord attempted to discuss the improvements that he would make which included cleaning, repairs to the deck and replacement of the carpets. The tenant declined the offer and left with her belongings.

The tenant stated that she returned to her home for one night and spent the next few nights at her sister's place. Her belongings were in the rental truck and she extended the rental period while she looked for a new place.

The landlord stated that he advertised the availability of the unit immediately on Craig's list and in a community paper. He incurred a cost of \$119.35 to run the advertisement in the community newspaper for one month. He also contacted other individuals who had expressed interest in renting the unit prior to his acceptance of this tenant. The landlord was successful in finding a tenant for May 01 and suffered a loss of income for the month of April.

Landlord's Application

The landlord is claiming the following:

1.	Loss of income for April	\$1,200.00
2.	Cost of mail and photographs	\$20.20
3.	Advertising	\$119.35
4.	Filing fee	\$50.00
	Total	\$1,389.55

Tenant's Application

The tenant is claiming the following:

1.	Return of damage and pet deposits	\$1,200.00
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2.	Damage deposit at new rental	\$750.00
3.	Rent differential at new rental	\$300.00
4.	Moving truck rental	\$379.98
5.	Filing fee	\$50.00
	Total	\$2,679.98

Analysis

Landlord's application:

Based on the sworn verbal testimony and documentary evidence filed by the landlord, I accept the landlord's evidence in respect of the claim. I find that the tenant ended a fixed term tenancy prior to the end date. In addition, pursuant to section 45 of the *Residential Tenancy Act*, the tenant did not give the landlord adequate notice to end the tenancy thereby resulting in a loss of income to the landlord.

The landlord mitigated his losses by advertising the unit but was not able to find a tenant for April. Therefore, I find that the landlord is entitled to \$1,200.00 for April.

The landlord did not file a receipt for the amount of advertising costs and offered to fax the receipt to the Residential Tenancy Branch. The tenant objected to evidence that was not served to her in advance of the hearing. Therefore the landlord's claim for \$119.35 for advertising costs is dismissed.

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the landlord's application for \$20.20 for mailing and photographs is dismissed. Since the landlord has proven his case, he is entitled to the cost of filing his application

Overall the landlord has established a claim in the amount of \$1,250.00.

Tenant's application:

The tenant ended the fixed term tenancy prior to the end date of the tenancy. The tenant stated that the condition of the unit was unsatisfactory, but declined the landlord's offer to have the unit cleaned and repaired and the carpets replaced.

Section 16 of the *Residential Tenancy Act* states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into whether or not the tenant ever occupies the rental unit. Based on the terms of the fixed term tenancy agreement that the tenant entered into, she is obligated to cover any loss of income that the landlord suffered due to non compliance on her part. Therefore the tenant owes the landlord \$1,200.00 for April.

I find that the tenant chose to move out without giving the landlord the opportunity to clean and repair the unit. Therefore the tenant is not entitled to her claim for \$750.00 for the security deposit at the new rental or the rent differential of \$300.00. The tenant has also not proven that she is entitled to the cost of the moving truck in the amount of \$379.98. Since the tenant has not proven her case she is not entitled to the recovery of the filing fee.

Conclusion

I order that the landlord retain the security and pet deposits of \$1,200.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$50.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant's application is dismissed in its entirety.

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: July 28, 2010.

Dispute Resolution Officer