



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF, O

Introduction

This matter dealt with an application by the landlord for a Monetary Order for unpaid rent, for loss or damage under the *Residential Tenancy Act (Act)*, regulation 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. The landlord withdraws his application for a Monetary Order for damages to the rental unit

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 27, 2009. The tenant confirmed she 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 and witness. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both Parties agree that this tenancy started on September 01, 2009. A written tenancy agreement was in place for a fixed term tenancy which was due to expire on August 31, 2010. Rent for this unit was \$1,200.00 per month and was due on the first of each month. The tenant paid a security deposit on \$600.00 on August 31, 2009.

The landlord testifies that the tenant sent him an e-mail on February 24, 2010 which stated that she would like to move out as spring and summer were coming and she was concerned about the lack of light in the rental unit and this gave her depression. The landlord states he is a busy man and did a fixed term tenancy with the tenant so he would not have to worry about re-renting the unit for at least a year. He states he did not say no to the tenants request but agreed she could move if she could find another tenant to take over the lease. The landlord states he agreed the tenant could advertise the unit with him having the final vetting of any future tenants.

The landlord claims that the tenant moved from the rental unit on March 31, 2010 without finding a replacement tenant. The tenant stopped her rent check for April, 2010 for \$1,200.00 and the landlord could not re-rent the unit until June 01, 2010. The landlord seeks to recover a loss of rent for April and May, 2010 to the sum of \$2,400.00.

The landlord states the tenants' evidence suggests she moved out because of a water leak in the bathroom ceiling. The landlord states he was in the process of dealing with this leak but had to confirm repairs with the owner of the unit above where the leak originated from and the Strata council of the building. He also had to get permits and file abatement due to asbestos being present in the building. The landlord claims all this contributed to the length of time the repairs took.

The landlord also seeks to recover the sum of \$150.00 from the tenant which was the fee incurred from the Strata for moving out. The landlord claims the tenant was made aware of this fee by e-mail. The landlord states this fee may only be \$100.00.

The tenant testifies that she moved from the unit due to the leak and felt the landlord did not take action to repair the leak and was therefore in breach of the tenancy agreement. The tenant claims she first notified the landlord of the leaking ceiling and mould at the end of November 2009. He came to check the unit. The tenant claims she told the landlord she wanted to leave the unit because of the leak on February 24, 2010. After cross examination the tenant states she did not include this in the e-mail she sent the landlord concerning the issue with the lack of light in the unit as she wanted to leave on good terms.

The tenant claims she advertised the unit for the landlord and showed the unit to about 13 prospective tenants who were all put off from renting because of the half finished repairs to the bathroom ceiling. The tenant claimed the landlord knew she would move out at the end of March as she had stated in the advert that the unit would be available on April 01, 2010.

The tenant called her witness to confirm details of a conversation between her and the landlord. This witness states he was present at the rental unit on the day the tenant met with the landlord to give him her forwarding address. The witness states he heard the landlord tell the tenant he would take her to court if she did not pay rent and he would notify immigration and her place of work.

The landlord at first could not recall having this conversation with the tenant but later stated he was angry with the tenant for ending the tenancy and did say these things to her.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness; Section 45 (2) of the *Act* states:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

The landlord argues that he agreed the tenant could end the tenancy early if she found a replacement tenant to take over the lease. The tenant argues that the landlord has failed to comply with a material term of the tenancy agreement which was not corrected within a reasonable period after the tenant gives written notice of the failure.

It is my decision from the evidence presented that the tenant wanted to end the tenancy because the rental unit was dark and this caused her to feel depressed. She confirmed this by e-mail to the landlord and both parties have presented this e-mail in evidence. I find later the tenant decided to use the repair to the ceiling as an excuse to end the tenancy early as she failed to find a new tenant to take over the lease as agreed between her and the landlord.

While I agree the repair to the ceiling did take a considerable length of time to repair I find the landlord did make these repairs in accordance to the Strata rules and the rules regarding dealing with asbestos which were the contributing factors in the length of time the repairs took. Consequently, I find in favor of the landlords claim to recover unpaid rent for April, 2010 as the tenant had already decided to end the tenancy in February, 2010. While I accept it is not the tenants' fault she could not find a new tenant to take over the lease due to the repairs to the bathroom ceiling, she would not have had to do so if she had not already decided to end the tenancy before the end of the fixed term.

With regard to the landlords claim for unpaid rent for April and May, 2010 I find the landlord has established his claim for **\$2,400.00** pursuant to section 67 of the *Act*.

With regards to the landlords claim for \$150.00 for Strata fees incurred as the tenant was moving from the rental unit. The landlord has provided no documentation from the Strata to determine the actual costs incurred due to the tenant moving out. The landlord claimed for \$150.00 and during the hearing said it may have been only \$100.00. A landlord when making a monetary claim must provide evidence of the actual costs incurred to support his claim. In this instance I find the landlord has failed to do this and appears vague about the actual costs. Consequently, I dismiss this section of his claim.

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As the landlord has been largely successful with his claim I find he is entitled to recover his **\$50.00** filing fee paid for this application from the tenant pursuant to section 72(1) of the Act.

The landlord has established his claim to keep the tenants security deposit of \$600.00 pursuant to section 38(4)(b) of the Act. This amount will be offset against the outstanding rent as follows:

Outstanding rent April and May, 2010	\$2,400.00
Subtotal	\$2,450.00
Less security deposit	(-\$600.00)
Total amount due to the landlord	\$1,850.00

Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,850.00**. 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: August 17, 2010.

Dispute Resolution Officer