



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND NNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, for unpaid rent, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the Act, sent via registered mail on September 14, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Agent confirmed receipt of the hearing documents and the Landlord's evidence.

The Landlord's Agent and the Tenant's Agent, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

The Tenant's Agent testified that they accept responsibility for \$840.00 of the Landlord's claim which consists of \$600.00 of unpaid rent for August 2010, \$25.00 August late payment fee, \$80.00 carpet cleaning charge, and the \$135.00 for cleaning of the rental unit. They are disputing the \$600.00 claim for loss of rent for September 2010 because they are of the opinion that the Landlord did not mitigate his loss.

Issues(s) to be Decided

1. Did the Landlord mitigate their loss of September 2010 rent?

Background and Evidence

I heard undisputed testimony that the Tenant's Agent is the 93 year old Tenant's daughter. On behalf of the Tenant, her Agent entered into a written month to month tenancy agreement effective April 1, 2010. Rent was payable on the first of each month in the amount of \$600.00 and the Tenant paid a security deposit of \$300.00 on March 25, 2010.

The Landlord's Agent testified that when August 1, 2010 rent was not paid a 10 Day Notice to End Tenancy was posted to the Tenant's door on August 4, 2010. After issuing the Notice the Agent made no attempt to contact the Tenant or her Agent and stated that at some point he was told that the Tenant would be vacating the unit. He argued that the Tenant did not provide him notice in writing of the date they were planning to vacate the unit so he felt the Landlord's hands were tied preventing them from showing the unit. He stated that the Tenant is 93 years old and would require notice to prepare for showings and he felt that it would be best not to interrupt her. He confirmed they listed the rental unit for rent September 3, 2010, on a local internet site for \$630.00 per month. The unit was cleaned on September 4, 2010, by the Landlord's contract cleaner who resides in the building. The unit was re-rent on September 23, 2010 for a tenancy agreement effective September 24, 2010 at the higher rate of \$630.00 per month.

The Tenant's Agent testified and confirmed she received the 10 Day Notice on August 4, 2010, the date it was posted. She stated the Landlord did not mitigate his loss as he should have advertised the unit as early as August 12, 2010 yet he waited until September 3, 2010. There was no contact from the Landlord or his Agent after they issued the Notice so the Agent informed the Landlord's cleaner that they would be

vacating the unit at the end of the month. She argued that there was nothing complicated about showing the Tenant's unit as the Landlord would have had to provide the normal 24 hour notice which was ample time for the Tenant to prepare for a showing. The Agent argued that the cleaner was an employee of the Landlords as she resided in the building, did the Landlord's cleaning work weekly, showed suites to prospective tenants, and it was the cleaner who the Agent told that the Tenant would be vacating the unit at the end of August 2010. The cleaner is who accepted return of the rental unit keys when the Tenant vacated the unit. As noted above, the Agent confirmed the Tenant has accepted responsibility for \$840.00 of the Landlord's claim but not for the September loss of rent. The Agent attempted to work out a payment plan with the Landlord but he refused. She noted that it only took the Landlord twenty days (September 3 to September 23, 2010) to rent the unit at the higher rate, \$630.00 instead of \$600.00 which shows the unit is very rentable and confirms their position that had the Landlord attempted to mitigate he would have re-rented the unit by September 1, 2010.

The Landlord's Agent argued the cleaner did not work as an agent for the Landlord. He stated that she was a casual contract worker and only did work on occasion for him as he does not reside in the building. He stated that he chose not to contact the Agent after issuing the Notice because their relationship had broken down and the Agent was hostile. He confirmed the Agent tried to negotiate a payment option but that it was for only \$5.00 per month which would take ten years to pay off.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

In this case the evidence supports that neither the Landlord nor his Agents made an attempt to deal with either the Tenant or her Agent to determine if they were disputing the Notice to End Tenancy or if they were planning to move out. It is a normal course of action for a Landlord to either confirm a tenant is moving after issuing a Notice or to make an application for dispute resolution to obtain an order of possession to prevent further occupation of the rental unit. I do not accept the Agent's statement that he did not know the Tenant was moving out at the end of the month as he made no attempt to acquire an Order of Possession.

In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, in most cases the landlord may recover any losses of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month. That being said in all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Delays in advertising the unit or attempting to re-rent the unit at an increased rent will not constitute mitigation. In this case the Notice to End Tenancy was received by the Tenant's Agent August 4, 2010, which means the Landlord could have either applied for an Order of Possession or confirmed that the Tenant was vacating the unit as early as August 9, 2010, five days after the Notice was received, and then began to advertise and show the unit. Instead the Landlord waited

unit September 3, 2010 to advertise the unit. I note that he advertised the unit at \$30.00 more per month and the unit was re-rented September 24, 2010. Based on the aforementioned I accept the Tenant's argument that the Landlord did not mitigate his loss and therefore I dismiss the Landlord's claim of \$600.00 for loss of September 2010 rent.

As the Tenant accepted responsibility of the remainder of the Landlord's claim prior to hearing, I decline to award the Landlord recovery of the filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Unpaid Rent for August 2010	\$600.00
Carpet cleaning	80.00
Cleaning of the unit	135.00
Subtotal (Monetary Order in favor of the landlord)	\$840.00
Less Security Deposit of \$300.00 plus interest of \$0.00	- 300.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$ 540.00

Conclusion

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$540.00**. The order must be served on the respondent Tenant 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: November 23, 2010.

Dispute Resolution Officer