



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by one landlord and one tenant.

The tenant asked for an adjournment to reconvene at a later date because he has been working 7:00 to 7:00 shifts at work for 4 months and has not been able to get her evidence together. She also states her husband has also been working extended hours over the same period and has been unable to deal with the matters.

As the application was made on October 8, 2010 and the tenants were served with notice of the hearing also in October I find no grounds to provide an adjournment to allow the tenants more time to prepare. Both parties were provided an opportunity to present their testimony and respond to the evidence and testimony during this hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage or loss under the tenancy agreement; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 44, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on January 31, 2010 for a 1 year fixed term tenancy beginning on February 1, 2010 for a monthly rent of \$850.00 due on the 1st of the month and a security deposit of \$425.00 was paid.

The landlord contends that the tenant provided notice to end the tenancy on July 16, 2010 but that it had been backdated to July 12, 2010 to end the tenancy on either

August 1 or 15. The tenant contends that they provided the landlord with notice to end the tenancy on July 1, 2010 by posting it on the landlord's door and that that notice indicated that they would be vacating the rental unit by August 1, 2010.

The landlord submitted a copy of a document dated July 19, 2010 and entitled "Acknowledgement of Early End of Tenancy Notice" where the tenant has accepted that if the landlord is unable to rent the unit the tenant remains responsible for any lost rent resulting from the tenant wanting to end the tenancy prior to the end of the fixed term. The document also contains the tenants' forwarding address.

Both parties agreed that the tenant did provide some candidates for the landlord to assess as potential new tenants. The landlord stated she had accepted one tenant but when she later contacted him to sign the tenancy agreement he decided against moving in. The tenant contends that landlord had accepted another tenant that she had put forward but then changed the rent amount and a requirement for pet damage deposit so this tenant decided not to start a tenancy.

The landlord confirmed that she placed ads at the University; Craigslist; and other websites and that she entered into a new tenancy agreement on July 26, 2010 for a tenancy beginning on August 15, 2010.

The landlord also provided a copy of a document entitled "Information for Vacating Tenants" dated July 23, 2010 that includes a handwritten note at the bottom inviting the tenant for two separate times on July 31, 2010 for a move out inspection.

The tenant testified that they had moved out by July 28, 2010 and cleaned the unit on July 31, 2010 but states that the landlord would not complete the move out inspection unless she paid the landlord \$1,600.00. The tenant goes on to break that amount down as follows \$400.00 for rent; \$400.00 for liquidated damages; and \$425 for the security deposit.

The landlord provided a copy of A Notice of Final Opportunity to Schedule a Condition Inspection to complete an inspection on August 9, 2010 and has noted that she posted it on the door of the rental unit on August 5, 2010. The landlord has submitted a copy of a move out condition inspection completed on August 9, 2010 without the tenants in attendance.

The landlord has submitted the following list as the details of her financial claim:

Description	Amount	Receipt Included
Lost Rent ½ month	\$425.00	N/A
Liquidated Damages	\$400.00	N/A
Oven Racks and Stove Ring Replacement	\$58.93	For a separate address
Carpet Cleaning	\$145.34	For a separate address
Key Replacement	\$3.34	Yes
Towel Rack Replacement	\$13.31	Receipt made out to a local grocery store
Blind Repair and Replacements	\$147.95	Yes
8 hours cleaning and supplies @ \$20/hr	\$160.00	Invoice to tenants
10 hours repair labour @\$25.00/hr	\$250.00	Invoice to tenants
Total	\$1,603.87	

The landlord testified that she had calculated the value of liquidated damages based on the average costs to re-rent a rental unit in terms of advertising, preparing the rental unit and assessing candidates and subsequent reference checking.

The landlord also noted that the reason the address for the receipts for the oven rack and stove rings is different than the rental unit is that it is the address of another rental unit she has and she needs to use it to obtain a discount based on her membership in a landlord organization.

The landlord's breakdown of the 8 hours of cleaning includes; stove cleaning; booking of a carpet cleaner; fridge, bathroom all windows and window slat treatments; vacuum and was baseboards and all doors and trim; cleaning of outdoor patio deck and wash down of all shelving and cupboards.

The breakdown for the 10 hours of repair claimed by the landlord includes replacing keys; bulbs and batteries (1 hour) ; patching holes in wall (1 hour); washing walls to prepare for painting (4hours); repair blind and install new blinds (1.5 hours); replace oven rings and racks 2 hours; and replace towel rods (1 hours).

Analysis

Section 45 of the *Act* states a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that, among other things, is not earlier than the date specified in the tenancy agreement as the end of the tenancy. However, a landlord who claims lost rent to the end of fixed term tenancy must do whatever is reasonable to minimize the loss, in accordance with Section 7.

As the tenant provided notice to end the tenancy on a date earlier than the end of the fixed term of the tenancy as defined in the tenancy agreement, I find it irrelevant as to whether the landlord received the notice either on July 1, 2010 or on July 16, 2010, I accept the landlord took all reasonable steps to re-rent the unit and limit the tenant's liability for ending the tenancy 6 months prior to the end of the fixed term.

As a result, I find the tenants are responsible for rent for the period August 1, 2010 to August 14, 2010. I accept the liquidated damages clause of the tenancy agreement reflects an accurate estimate of the costs associated with the landlord's requirements to re-rent the rental unit 6 months prior to the end of the fixed term. I further accept that this clause does not constitute a penalty.

While the tenant asserts in the first notice they provided to the landlord they stipulated the tenancy would end on August 1, 2010, the landlord asserts that she did not receive that notice but only the one dated July 12, 2010 that states the tenant would be moving out by either August 1, 2010 or August 15, 2010.

I accept that the landlord was acting upon the second notice and I find it reasonable for the landlord to believe the tenant remained living in the rental unit until August 14, 2010 and therefore find the landlord fulfilled her obligation under Section 35 of the *Act* regarding providing at least 2 opportunities for a move out condition inspection.

However, in the absence of a signed agreement on the move out inspection by the tenants, I find the landlord's reliance on the document as the only evidence of the condition of the rental unit at the end of the tenancy to be weak. For example, the landlord states on the report that the oven rack and stove rings require cleaning and are damaged beyond cleaning, with no other documentary or photographic evidence of the condition.

Without any corroborating evidence, I find it unlikely that an oven rack and stove rings could be that damaged that warranted the replacement of both items. Further to this, as the receipts for the replacements indicate they are for a different address, I find the landlord has failed to establish that these items needed replacement.

Additionally the landlord has submitted a receipt for carpet cleaning yet has failed to establish that the carpets required cleaning other than her statements on the inspection report and a receipt that shows a different address for carpet cleaning and I find the landlord has failed to establish the rental unit required carpet cleaning.

As to the towel rack replacement, again without any corroborating evidence and with only a receipt made out to a local grocery store, I find the landlord has failed to establish that the towel rack replacement was required for this rental unit.

I accept the landlord's claim to the blind repairs and replacements based both on the condition inspection report and the accurate receipt showing the rental address as the location for the repairs and replacement products. I also accept the charges for the key replacement.

In the absence of any documentary evidence from the tenant I accept the landlord was required to clean the rental unit as described in the invoice submitted. However, as to the landlord's claim for the labour for repairs I find as follows:

Activity and Duration	Finding
Replace keys, bulbs, batteries (1 hour)	I find these activities are the landlord's responsibility to prepare for a new tenant and are therefore not this tenant's responsibility.
Patching holes in walls and washing walls in preparation for painting (5 hours)	I accept the amount of time required for these tasks as reasonable.
Repair blind and install new blind (1.5 hours)	I accept the amount of time required for this task as reasonable.
Replace stove rings and oven racks (2 hours)	As I found the landlord has failed to establish this was required I do not accept the claim for this activity.
Replace towel racks (1 hour)	As I found the landlord has failed to establish this was required I do not accept the claim for this activity.

From the table above, I accept the landlord has established entitlement to 6.5 hours of labour for repairs, however the landlord has provided no justification for a charge of \$25.00 per hour for repairs. In fact, the landlord has stated in her document entitled "Information for Vacating Tenants" that the charge for repair work is \$20.00 per hour. As such, I find the landlord is entitled to \$130.00 for the repair work.

And finally, I note that the landlord filed her Application for Dispute Resolution on October 8, 2010 and that the tenancy ended on August 14, 2010 with the landlord already in possession of the tenants' forwarding address prior to the end of the tenancy.



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As such, the landlord failed to comply with Section 38(1) of the *Act* that requires a landlord to either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit within 15 days of the end of the tenancy and receipt of the forwarding address.

Section 38(6) states that should the landlord fail to comply with Section 38(1), she must pay the tenant double the amount of the security deposit. As such, I find the tenants are entitled to double the amount of the security deposit to be credited against the debt owed determined by this decision.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,143.34** comprised of \$425.00 rent owed; \$400.00 liquidated damages; \$3.34 key replacement; \$160.00 cleaning; \$130.00 repairs and \$25.00 for half of the fee paid by the landlord for this application.

I order the landlord may deduct double the security deposit held in the amount of \$850.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$293.34**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced 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: January 07, 2011.

Residential Tenancy Branch