



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This is a cross application where the Landlord has filed for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all of the security deposit and the recovery of the filing fee. The Tenant has also made an application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for the return of the security deposit and the recovery of the filing fee.

Both parties attended the hearing by conference call and gave affirmed testimony.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?
Is the Landlord entitled to keep the security deposit?
Is the Tenant entitled to a monetary order?

Background and Evidence

This tenancy began on September 1, 2010 on a fixed term for 2 years until August 31, 2012 as shown in the submitted signed tenancy agreement. The monthly rent was \$2,500.00 payable on the 1st of each month and a security deposit of \$1,250.00 was paid August 16, 2010.

Both parties attended the hearing by conference call and have confirmed receipt of the notice of hearing and evidence packages submitted by either party. Both parties have used registered mail to submit their documents and neither party has disputed receiving the evidence of the other.

The Landlord is claiming \$6,900.00 for the loss of rental income (\$300.00 x 23 months) for the difference in the Tenant's tenancy agreement (\$2,500.00 per month) with that of

the new Tenant's tenancy agreement(\$2,200.00 per month) for the remainder of the 24 month fixed term the Tenant's entered into. The Landlord states that the notice to end tenancy received from the Tenant was on September 22, 2010. The Tenant confirms that this was the day that both parties attended a meeting at the Landlord's office. Both parties agreed that the Tenancy ended on September 27, 2010. The Landlord is also claiming \$401.87 consisting of \$280.00 (\$250.00 + \$30.00(12%HST)) for a re-rental fee charged to the owner and \$140.00 for changing the locks. The Tenant does not dispute any of these points.

The Tenant has made a claim of \$12,032.30 for the costs of \$1,250.00 security deposit return, \$2,500.00 return of September rent and the following for costs associated to moving and returning to Salem, Oregon of Fuel costs of \$270.00, Trailer Rental of \$1,000.00, Veterinary costs for Horses, Dogs and Cats of \$208.30 and \$461.00, USDA Horse Inspections \$143.00, Horse Transport and Return Horse Transport of \$2,400.00 (\$1,200.00 each way), Lost Wages for RA \$3,500.00 and Miscellaneous Expenses of \$300.00. The Tenant's attribute these costs to Health and Safety concerns which prohibited them from living at the rental unit. The Tenant cites issues of a foul odor, itching, headaches, swollen eyes, sore throats, black mold, house is filthy and unlivable, unable to drink well water, barn is unsafe for horses, not able to turn out horses in pastures, back door lock is broken, master bath shower door broken, rotting wood in barn doors. The Tenants state that the Landlord was informed of these issues shortly after they moved in on September 17, 2010 and did not deal with them in a timely manner. The Landlord disputes this stating that the Tenant failed to inform them of most of these issues prior to the September 22, 2010 date. The Landlord stated that when informed they dealt with the water issue by providing bottled water and would have continued to do so until a water test was done. The Tenant's left prior to this being done. The Landlord disputes the Tenant's claim that they had not been given an opportunity to address the issues in a timely manner. The Landlord states that notice was not properly given.

Analysis

Based upon the evidence of both parties attending the hearing, I am satisfied that both have been properly served with the notice of hearing and evidence packages.

I am satisfied that the Landlord has proven the claim of loss of rental income. The Tenant failed to give proper notice to end the tenancy. I grant the Landlord's claim of \$6,900.00 for the difference in the two tenancy agreements for loss of rental income.

The Landlord has failed in her application for re-rental costs. The Landlord's evidence states that no new advertising resulted from the early end of tenancy. The Landlord used an existing list of prospective Tenant's and was able to re-rent within a few days of being notified by the Tenant. The cost of new locks is also something that the Landlord would normally bear the burden of replacing between tenancies. The Landlord has failed to satisfy me that the Tenant was responsible for the need to change the locks. As such, this portion of the Landlord's claim is dismissed.

The Tenant has not satisfied me that she gave proper notification to the Landlord to deal with the issues cited. The Tenant vacated the unit within 6 days of September 22, 2010 of providing a list of concerns to the Landlord. The Landlord has disputed the Tenant's evidence and without supporting evidence, I find that the Tenant has failed to prove her claim. As such, the Tenant's application is dismissed.

As the Landlord has established a claim for \$6,900.00 in lost revenue, I also find that the Landlord is entitled to the recovery of the \$100.00 filing fee. I order that the Landlord retain the \$1,250.00 security deposit in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$5,750.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$5,750.00.
The Landlord may retain the security deposit.
The Tenant's application is dismissed.

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: April 05, 2011.

Residential Tenancy Branch