



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent?
2. Has the landlord established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The one-year fixed term tenancy commenced September 1, 2010 and the tenant was required to pay rent of \$750.00 on the 1st day of every month. The tenant paid a \$375.00 security deposit. A move-in inspection report was not prepared by the landlord. The tenant vacated the rental unit at the end of October 2010. The landlord re-rented the unit effective December 1, 2010 for \$735.00 per month.

The landlord requested the claim be amended to reduce the amount claimed against the tenant for loss of rent and I accepted the amendment. The landlord has sought compensation from the tenant for following amounts:

<u>Item</u>	<u>Reason</u>	<u>Claim</u>	<u>Comment</u>
Loss of rent	Rent differential for remaining term (\$15.00 x 9 months)	135.00	As amended
Carpet cleaning		134.50	
Advertising cost	Ad on Kijiji	10.00	
Filing fee		50.00	
Less: security deposit		- 375.00	
Total amended claim		\$ 704.50	

The tenant was of the position she did not owe rent for November or subsequent months for the following reasons. She did not view the unit before signing the agreement since her parents had viewed it for her and upon arriving at the residential building the landlord presented the tenant with a tenancy agreement to sign. The tenant claims she was unaware that the tenancy was for a fixed term prior to this meeting but the tenant signed the tenancy agreement. The tenant also submitted that the tenant discovered the rental unit smelled of smoke and that the noise coming from nearby units was very disruptive.

I heard that in late September or early October 2010 the tenant raised concerns to the landlord about the smell of smoke and noisy neighbours. The landlord responded by denying that a smoker had lived in the unit prior to the tenant and the landlord suggested the tenant talk directly to the neighbour about the noise issue. The tenant did approach the neighbour but the situation worsened. On October 20, 2010 the tenant emailed the landlord to inform the landlord that the noise situation was unbearable and that she might have to move out. The landlord responded by stating that she would speak to the neighbour and take the issue up with the strata council.

On October 27, 2010 the tenant telephoned the landlord to advise the landlord of her intention to vacate the rental unit at the end of the month. The landlord and tenant had another conversation on October 28, 2010. Both parties agreed that the landlord had told the tenant that she was acting immaturely and like a teenager. The tenant took offence to those comments and alleged harassment by the landlord. Both parties provided consistent testimony that the landlord reminded the tenant that she had a continued obligation to pay rent under the lease.

The minutes of the strata minutes reflect that on October 29, 2010 the landlord did make a complaint about the noisy neighbour to the strata. The tenant pointed out that

this complaint was made after she gave her verbal notice to end tenancy. The landlord explained that the strata council meets periodically and that this issue was brought forward in time for the next strata meeting.

The tenant was of the position the landlord did not act sufficiently to address her concerns about the smoke smell or the noise problem. The landlord was of the position that there was not an issue with a smoke smell and that she did bring the noise issue up to the strata council but that such issues take time to resolve.

With respect to carpet cleaning, the tenant acknowledged she did not have the carpets cleaned but stated that the unit was left clean and the carpets vacuumed.

Analysis

Upon consideration of all of the evidence before me I make the following findings.

The tenant entered into a fixed term tenancy agreement. Although the tenant submitted that she did not have prior knowledge that the tenancy would be for a fixed term before she arrived at the rental unit, I do not find evidence the tenant signed the agreement under duress, and I find the agreement is valid. Therefore, I find the tenant was obligated to fulfill the obligations upon her under a fixed term tenancy, as provided by the tenancy agreement and the Act.

The Act does provide a mechanism for tenants to end a fixed term tenancy where the landlord has breached a material term of the tenancy agreement. The right to quiet enjoyment is conveyed to a tenant by the Act and the courts have found this right is also a material term under a tenancy agreement. Therefore, where a landlord has violated the tenant's right to quiet enjoyment the tenant may end a fixed term tenancy in accordance with section 45 of the Act.

Section 45(3) provides that if a landlord has failed to comply with a material term of the tenancy 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.

Based upon the email communication between the parties, I find the tenant clearly communicated to the landlord on October 20, 2010 that she was being significantly disturbed by noise from other occupants of the building and indicated that she may consider ending the tenancy because of it. The landlord responded to the tenant on October 21, 2010, via two emails, in which the landlord asks the tenant to provide her with the room number of the "noise maker" and states that she is going to not only

report this issue but also speak to the noise maker herself. The landlord asks the tenant to provide the above-requested information by the next day so that the landlord could call the strata management company. I find this is a very reasonable response by the landlord.

It is unclear to me whether the tenant responded to the landlord's emails of October 21, 2010. In the tenant's submissions, the tenant states that she tried calling the landlord on October 26, 2010 but that the tenant was not home when the landlord returned her call. The next communication between the landlord and tenant was the phone call of October 27, 2010 whereby the tenant gave her verbal notice to vacate.

The documentary evidence included the strata council meeting minutes for the meeting that was held on November 17, 2010. Those minutes also reflect that the previous strata council meeting was held September 16, 2010 and that the landlord reported an issue with noise coming from the offending unit on October 29, 2010. This evidence supports the landlord's submission that she reported the issue to the strata in time to be dealt with for the next strata meeting.

Since the person responsible for causing the disturbances was not a tenant of the landlord, the landlord's cause of action was to bring the matter to the strata for enforcement against the occupant or owner of the offending unit. I find the landlord did take this action prior to the next strata meeting. I also accept that matters such as excessive music and barking dogs take time to resolve yet only seven days lapsed between the date the tenant communicated the significant effects of the disturbances upon her to the landlord and informing the landlord she would be vacating the unit. I do not find the tenant gave the landlord a reasonable amount of time to correct the situation before ending the tenancy.

In light of the above, I find the tenant did not fulfill the criteria under section 45(3) of the Act and I find the tenant was not entitled to end the tenancy as quickly as she did. Therefore, I hold the tenant responsible for unpaid rent for the month of November 2010.

I do not award the landlord for the advertising costs or the decrease in rental revenue for the remainder of the term since I was not provided evidence as to when or if the noise issue was resolved.

I do not award the landlord the carpet cleaning costs as the tenant resided in the rental unit a very short period of time. Residential Tenancy Policy Guideline 1 provides that a tenant is generally responsible for carpet cleaning where the tenancy is longer than one

year or where the tenant smoked or had pets in the unit. Alternatively, carpet cleaning may be a term of a tenancy agreement. However, I do not find any of these situations apply in this case.

I award the filing fee to the landlord and authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amount awarded to the landlord. The landlord is provided a Monetary Order calculated as follows:

Unpaid rent – November 2010	\$ 750.00
Filing fee	50.00
Less: security deposit	<u>(375.00)</u>
Monetary Order	\$ 425.00

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The landlord was successful in establishing an entitlement to unpaid rent for November 2010. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$425.00 to serve upon the tenant.

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 07, 2011.

Residential Tenancy Branch