



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order 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. The Tenant confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, 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.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement that began on May 1, 2010 and was set to switch to a month to month tenancy after April 31, 2011 [sic]. Rent was payable on the first of each month in the amount of \$1,075.00 and on May 1, 2010 the Tenant paid \$500.00 as the security deposit. The Tenant provided notice to end this tenancy as of June 30, 2010. The security deposit was dealt with in a previous dispute resolution hearing.

The Landlord testified he is seeking monetary compensation as follows:

- 1) \$1,075.00 for loss of July 2010 rent. He advertised the unit on June 1, 2010 however was not able to find a suitable tenant within the first ten days. Then on the tenth day he was able to secure a suitable tenant for a tenancy to begin on August 1, 2010 at the same rent amount. He entered into a written fixed term tenancy agreement with the new tenant on June 10, 2010 and stopped looking for tenants because he was bound by this new agreement.
- 2) \$106.08 for the cost of fuel and postage. The Landlord stated that he did not know how much he was attributing to each item being claimed here and he did not submit receipts for fuel or postage.
- 3) \$250.00 for lost wages because he had to attend the rental unit to conduct the move-out inspection. The Landlord did not submit evidence to support that \$250.00 was an amount equal to a day's wage for him. He stated that his expenses exceeded this because he lives in another province and had to fly to a nearby city and rent a car in order to attend the unit at the end of June 2010.
- 4) \$50.00 to recover the cost of the filing fee.

The Tenant testified she submitted written notice to end her tenancy and she vacated the property by June 20, 2010. She believes the Landlord did not look hard enough to find a tenant for July 1, 2010. She provided the landlord with several names of prospective tenants and also requested permission to assign her lease, however the Landlord refused to respond to her submissions. She feels because he did not accept any of the tenants that were willing to rent as of July 1, 2010 that she should not be responsible for July's rent.

As for the fuel, postage, and wages being claim by the Landlord, she was not provided with receipts as proof for the amounts being claimed.

In closing the Landlord confirms the Tenant provided them with two names of prospective tenants however none of them checked out to fit with the Landlord's requirements. For example one had a pet and there are no pets allowed and another requested a lower rent saying they could not afford the amount being asked for by the Landlord.

Analysis

I have carefully considered the testimony and evidence which included, among other things, a copy of the tenancy agreement, a copy of the notice to end tenancy issued by the tenant, and copies of several e-mails that were sent between the parties.

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

Section 45(2)(b) of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

The evidence supports the Tenant ended the fixed term tenancy agreement in a manner that breached section 45(2) of the Act. The evidence further supports the Landlord mitigated his loss by securing a new tenant that was suitable for the unit as of August 1, 2010.

I do not accept the Tenant's testimony that she is released of her duty to pay July rent because the Landlord refused to accept any of the proposed tenants that were provided by her. A Landlord is not obligated to take a tenant who does not meet their screening requirements in order to meet the test of mitigation. In this case I find the Landlord did what was reasonable in securing a tenant that met his screening requirements as soon as possible.

Based on the above, I find the evidence supports the Landlord suffered a loss of one month's rent due to the Tenant's breach of the Act and the Landlord has met the burden of proof to establish their claim. Therefore, I award the Landlord **\$1,075.00** as loss of rent for July 2010, pursuant to section 67 of the Act.

There is no evidence before me to support the remainder of the Landlord's claim for fuel, postage, and loss of wages, in the amount of \$356.08 (\$106.08 + 250.00).

Therefore I find there is insufficient evidence support the test for damage or loss, as listed above and I hereby dismiss this portion of the Landlord's claim, without leave to reapply.

The Landlord has been partially successful with his claim; therefore I award partial recovery of the filing fee in the amount of **\$25.00**.

Conclusion

The Landlord's decision will be accompanied by a Monetary Order in the amount of **\$1,100.00** (\$1,075.00 + 25.00).

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: June 02, 2011.

Residential Tenancy Branch