



Dispute Resolution Services

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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.

The parties appeared at the teleconference hearing, acknowledged receipt of the hearing documents and 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 and/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 was to begin on January 1, 2011 and was set to switch to a month to month tenancy after December 31, 2011. Rent was payable on the first of each month in the amount of \$725.00 and on December 9, 2010 the Tenant mailed the Landlord a cheque for \$362.50 as payment of the security deposit.

The parties agreed that the Tenant would be allowed to move into the rental unit early, on December 27, 2010, a time when the Landlord would be out of town. The Landlord completed the move in inspection document in the absence of the Tenant and left a copy with his Administrative Assistant who met with the Tenant December 27, 2010 to give her a copy of the inspection report and the keys to the unit. The Tenant then completed adjustments to the move in inspection form, signed it and returned a copy to

the Landlord. Both parties attended the move out inspection on May 1, 2011 at 4:30 p.m. and signed the form.

The Landlord testified he received an e-mail from the Tenant on March 13, 2011 to advise she would be ending her tenancy as of April 30, 2011. The rental unit was advertised on the Landlord's website as of March 14, 2011 and was listed in the local paper beginning March 25, 2011, as supported by the Landlord's documentary evidence. In addition to listing the property for rent the Owner also listed the property for sale. The property is no longer on the market for sale and a new tenant was secured as of August 1, 2011. The property remained vacant from May 1, 2011 to July 31, 2011.

The Landlord is seeking \$362.50 as liquidated damages as provided for in the tenancy agreement, \$2,175.00 for lost rental income for the three month period of May, June, and July (\$725.00 x 3), plus advertising costs of \$50.67.

The Tenant confirmed she ended her tenancy agreement prior to the end of the fixed term and argued that she was not aware she was signing a lease. She confirmed she read the tenancy agreement prior to signing it but did not recall agreeing to a fixed term for a period of one year. After I explained the operational definitions of a lease and fixed term tenancy agreement the Tenant then stated she had to move out because of safety reasons. She argued she informed the Landlord at the beginning of March 2011 that her sliding door would not lock and they failed to repair it in a reasonable amount of time. She confirmed she was able to place a piece of wood in the track to prevent the door from opening.

The Landlord argued that the issue of the door not being able to lock did not occur until after work was done by their handyman on April 4, 2011, as supported by their evidence which is more than two weeks after the Tenant sent her notice to end tenancy so could not have been the reason why she chose to break her tenancy agreement.

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

Section 45(2) 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 (a) is not earlier than one month after the date the landlord receives the notice, (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case the Tenant chose to end her tenancy instead of seeking remedy through the Residential Tenancy Branch to resolve concerns she had with her tenancy. Her action of ending the tenancy prior to the end of the fixed term is a breach of Section 45(2)(b) of the Act as listed above.

Based on the aforementioned I find the Landlord has met the burden of proof to establish a claim for loss of rent for the three months of May, June, and July 2011. Therefore I award the Landlord loss of rent in the amount of **\$2,175.00** (3 x \$725.00).

The tenancy agreement provides a liquidated damages clause which states "If the tenant breaks the lease before the end of the original term, the Landlord may, at the Landlord's option, treat this Tenancy Agreement as being at an end. In such event, the Tenant will pay to the Landlord as liquidated damages, the amount of \$362.50 to cover the administration costs of re-renting the property."

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable to cover costs to re-rent the unit such as advertising costs, costs incurred to show the unit, for reference checks and administrative costs, in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

The evidence supports the Tenant read the terms of the tenancy agreement and then agreed to them by signing the agreement. After careful review of the evidence I find the amount of \$362.50 to be a reasonable estimate of costs to re-rent the unit; therefore I approve the Landlord's claim of **\$362.50** for liquidated damages.

In addition to liquidated damages the Landlord has sought \$50.67 for advertising costs. Such costs would be considered as costs covered by the liquidated damages clause. Therefore I dismiss the Landlord's claim of \$50.67 for advertising.

The Landlord has been successful with the majority of their application, therefore I award recovery of the **\$50.00** filing fee.

Monetary Order –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 Tenants' security deposit as follows:

Loss of Rent for May, June, & July 2011 (3 x \$725.00)	\$2,175.00
Liquidated Damages	362.50
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	\$2,587.50
LESS: Security Deposit of \$362.50 plus interest of \$0.00	<u><u>-362.50</u></u>
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$2,225.00

Conclusion

The Landlord's copy of this decision will be accompanied by a Monetary Order in the amount of **\$2,225.00**. This Order is legally binding and must be served upon the Respondent 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: August 25, 2011.

Residential Tenancy Branch