



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Preliminary Issues

The female Tenant requested that her first name be spelled correctly. In response the Landlord requested to have her application amended to correct the spelling of the Tenant's first name. As both parties were in agreement I approved the request to amend the application and corrected the spelling of the female Tenant's first name.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, to keep all or part of pet damage deposit or security deposit, 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 Tenants for this application.

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on July 12, 2011. Mail receipt numbers were provided in the Landlord's evidence.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Have the Tenants 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 Tenants occupied the rental unit since August 15, 2009. A second fixed term tenancy agreement was entered into that began on September 1, 2010 and was set to end on August 31, 2011 at which time the Tenants were required to vacate the property. Rent was payable on the first of each month in the amount of \$1,050.00 and was inclusive of all utilities. On July 27, 2009 the Tenants paid \$487.50 as the security deposit. The Tenants attended the move in inspection on August 14, 2009 and did not attend the move out inspection which was conducted in their absence June 30, 2011.

The Landlord affirmed she received a call from the female Tenant sometime in May 2011 advising her they were going to be vacating the property in June 2011. She stated that she advised the Tenant of her responsibilities to provide written notice to end the tenancy early and advised the Tenant of her obligations to pay rent until the end of the fixed term or they would be considered to have broken the lease. The Landlord stated the Tenant responded by saying she did not have to comply with the lease because the house was up for sale.

The Landlord stated that on June 29, 2011 a letter was delivered to her office and left with the receptionist which indicates the Tenants were ending the tenancy as of June 30, 2011 as they were moving up north. The Landlord attended the rental unit and found it vacant so she conducted the inspection in the Tenant's absence.

The Landlord confirmed the property had been listed for sale from mid May 2011 and taken off the market in mid July 2011. The rental unit was listed on several websites for rent in early July 2011 for the same rate of \$1,050.00 per month and remains vacant to this day. The upper unit was re-rented as of September 1, 2011 with few interested clients looking at the lower unit which was the Tenants' unit.

The Landlord is seeking \$2,858.00 in losses which is comprised of loss of two month's rent for July and August 2011 (2 x \$1,050.00); liquidated damages of \$500.00 which was a predetermined amount to cover the costs of re-renting the unit; \$90.00 for cleaning the rental unit blinds, under the appliances, and base boards on July 4, 2011; and \$168.00 for professional carpet cleaning that was completed July 6, 2011; as supported by the invoices, tenancy agreement, and inspection report provided in her evidence.

The Tenants affirmed they did not provide documentary evidence in response to the Landlord's claim. They confirmed they advised the Landlord verbally in May 2011 that they would be vacating the rental unit in June 2011. They argued they had a verbal discussion with the listing realtor, who does not work for the Landlord, whereby the realtor encouraged them to move out of the rental unit early so that the house would sell quicker. They alleged they entered into an agreement with the Landlord to pay the July and August rent so they would not have to pay the liquidated damages. They have made no effort to pay the two month's rent as they were waiting for a bill from the Landlord along with a copy of the carpet cleaning invoice. The Tenants confirmed they made no effort to contact the Landlord after receiving copies of her application for dispute resolution to negotiate payment of the rent.

The female Tenant stated that she requested to set up a time for the move out inspection when she spoke with the Landlord in May 2011. She confirmed there was no further communication with the Landlord until their written notice to end their tenancy was dropped off at the Landlord's office with the keys.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on a balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application 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.

Item # 5 of the tenancy agreement provides that “If the tenant ends the fixed term tenancy, or is in breach of the *Residential Tenancy Act* or a material term of this Agreement ... the tenant will pay the landlord the sum of \$500.00 as liquidated damages and not as a penalty”.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable 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. I accept that the amount was previously agreed to for the same amount in the first and second tenancy agreements and is a reasonable amount for costs incurred to re-rent the unit.

In this case the Tenants could not end their tenancy prior to the end of the fixed term on August 31, 2011 without being in breach of the Act and their tenancy agreement. I do not accept the Tenants' argument that they had an agreement with the listing realtor, someone who has no authority to determine matters pertaining to their tenancy agreement, and that this agreement would exempt them from their obligations as set out under the *Residential Tenancy Act*. Furthermore I do not accept that they had a verbal agreement with the Landlord to pay the rent and would avoid the liquidated damages as there is insufficient evidence to support the presence of such an agreement or prove any effort was made on the part of the Tenants to pay the rent before today's hearing. Accordingly I award the Landlord liquidated damages in the amount of **\$500.00**.

As per the aforementioned, the Tenants ended their tenancy June 30, 2011 in breach of section 45(2) of the Act, which has caused the Landlord to suffer a loss of rental income for July and August 2011. Accordingly I approve the Landlord's claim of loss of rent in the amount of **\$2,100.00** (2 x \$1,050.00).

Section 35(5)(b) of the Act provides that an inspection of the rental unit must be conducted at the end of the tenancy and that the landlord may make the inspection and complete and sign the report without the tenant if the tenant has abandoned the rental unit.

The undisputed testimony confirms the Tenants did not provide written notice to end their tenancy until June 29, 2011 when they returned the keys and left town leaving no opportunity for the Landlord to schedule a move out inspection. Therefore I find the Landlord complied with section 35(5)(b) of the Act by conducting the inspection in the Tenants' absence. That being said, in accordance with part 3 section 21 of the Regulation, I accept the inspection report is evidence of the state of repair and condition of the rental unit on June 30, 2011. Accordingly I approve the Landlord's claim of

\$258.00 which consists of \$90.00 for cleaning plus \$168.00 for professional carpet cleaning.

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

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Loss of Rent (July & August 2011)	\$2,100.00
Liquidated Damages	500.00
Cleaning (rental unit & Carpet)	258.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,908.00
LESS: Security Deposit \$487.50 + Interest 0.00	<u>-487.50</u>
Offset amount due to the Landlord	<u>\$2,420.50</u>

Conclusion

The Landlord's decision will be accompanied by a Monetary Order in the amount of **\$2,420.50**. This Order is legally binding and must be served upon the respondent Tenants.

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: October 13, 2011.

Residential Tenancy Branch