



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, MNDC, MNR, FF

Introduction

This hearing was convened in response to an application by the landlord filed on August 29, 2011 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A Monetary Order for unpaid rent / loss of revenue - Section 67;
2. An Order to retain the security - Section 38
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were each given opportunity to discuss and settle their dispute, present relevant evidence, make relevant submissions, and provide relevant testimony. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary matters

The landlord filed late evidence of four (4) pages to this hearing: *mailed* to the tenant on October 20, 2011. Section 90 of the Act states that a document given to the other party is deemed to be received on the 5th. day after it is mailed. The tenant claims they did not receive this evidence. It was determined during the hearing that the tenant had one (1) page of the evidence in possession from a prior event, therefore, this document alone was taken into consideration for this matter.

The tenant testified she had a monetary claim to mitigate the landlord's claim and submitted evidence in this respect. The tenant was referred to an Information Officer of the Residential Tenancy Branch.

Issue(s) to be determined

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The relevant testimony in this matter is that the tenancy started August 01, 2011, 2010 as a fixed term tenancy agreement for twelve (12) months. The tenant vacated on August 31, 2011. At the outset of the tenancy the landlord collected a security deposit of \$925, which the landlord still holds. The rent payable per month was \$1850.

The parties do not dispute that several weeks into the tenancy the tenant called the landlord – leaving a voice mail message they wished to discuss the tenancy with the landlord. There is no dispute that five days later (on or about August 27, 2011) the landlord called the tenant back, at which time the tenant verbally notified the landlord they were vacating at month's end because they claim to have discovered the rental unit had bed bugs. The landlord testified that this notification was the first time he had been apprised of a pest issue and disputed this information with the tenant. The following day the parties personally met and discussed the matter of bed bugs. The landlord testified they offered to remedy any issues immediately and relocate the tenant during any required period for any remediation of any pest issue. The following day on August 29, 2011 the landlord employed a local pest control contractor to assess the rental unit. The landlord received a report from the contractor identifying that the rental unit was free of any pest issues – and the landlord gave the tenant a copy of the report at that time. The tenant acknowledges receiving the report, but disputes the findings of the report. On August 31, 2011 the tenant vacated the rental unit – alleging the landlord failed to comply with the tenancy agreement. The landlord testified that at no time were they given an opportunity to address the verbal concerns of the tenant before or after the pest control report was given to the tenant. The landlord testified they did not receive anything in writing from the tenants addressing their reasons for ending the tenancy. The tenant testified that they verbally notified the landlord of their concerns of bed bugs after they had determined to vacate.

The landlord testified they were able to find a new tenant for the rental unit for October 01, 2011, after a course of advertising. The landlord seeks loss of rent / loss of revenue for the month of September 2011 in the amount of \$1850, plus advertising costs of \$250.

Analysis

In this matter the burden of proving claims of loss and damage rests on the claimant (landlord) who must establish, on a balance of probabilities that they have suffered a loss due to the tenant's neglect, or failure to comply with the Act. And, if so established, did the claimant (landlord) take reasonable steps to mitigate or minimize the loss? Section 7 of the Act outlines the foregoing as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) 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 damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The landlord bears the burden of establishing their claim by proving the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the losses that were incurred.

Section 44 and 45 of the Act state how a tenancy ends and state how a tenant may end a fixed term tenancy. In part **Section 44** states as follows, (emphasis mine)

How a tenancy ends

44 (1) A tenancy ends **only** if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 *[tenant's notice]*;

(ii) section 46 *[landlord's notice: non-payment of rent]*;

(iii) section 47 *[landlord's notice: cause]*;

(iv) section 48 *[landlord's notice: end of employment]*;

(v) section 49 *[landlord's notice: landlord's use of property]*;

(vi) section 49.1 *[landlord's notice: tenant ceases to qualify]*;

(vii) section 50 *[tenant may end tenancy early]*;

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

In part, **Section 45** states as follows,

Tenant's notice

45 (2) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service 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 effective on a date that is after the date the landlord receives the notice.

In this matter, I find that the tenant may have had cause to end the tenancy for the very reasons they informed the landlord; however, I find the tenant breached the tenancy agreement and the Act by failing to provide the landlord with the necessary means to legally end the tenancy according to the Act. As a result, I find the landlord was not afforded sufficient time to re-rent the rental unit for September 01, 2011. I find the landlord has proven they sufficiently mitigated their claim by securing new tenants as soon as possible, after the tenant's breach, and are therefore entitled to rent for the month of September 2011 in the amount of **\$1850**. I find the landlord has not supported their claim for advertising costs, and this portion of their claim is therefore **dismissed**, without leave to reapply. As the landlord has been largely successful in their claim, I grant the landlord recovery of the filing fee in their amount of **\$100**. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Rent / loss of revenue for September 2011	\$1850.00
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Filing Fees for the cost of this application	100.00
Less Security Deposit and applicable interest <i>to date</i>	-925.00
Total Monetary Award to landlord	\$1025.00

Conclusion

I Order that the landlord retain the security **deposit** of \$925 in partial satisfaction of the claim and I grant the landlord an order under Section 67 of the Act for the balance due of **\$1025**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 25, 2011

Residential Tenancy Branch