



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application by the Landlord for a monetary order for unpaid rent, for liquidated damages arising from the Tenant breaking a fixed term lease early, for unpaid utility bills, for cleaning the rental unit, for an order allowing the Landlord to keep the security deposit in partial satisfaction of the claim, and to recover the filing fee for the Application.

Two Agents for the Landlord appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agents testified they served the Tenant with the Notice of Hearing and Application documents by registered mail, sent on August 15, 2011. Despite this the Tenant did not appear at the hearing. I find the Tenant has been duly served under the Act.

Issues(s) to be Decided

Did the Tenant breach the term lease, or breach the Act or tenancy agreement, entitling the Landlord to monetary compensation?

Background and Evidence

On June 24, 2011, the Tenant signed a tenancy agreement with the Landlord. The agreement had a term of six months, lasting until December 31, 2011. Following this, it was continue on a month to month basis. The monthly rent was \$1,455.00 and the Tenant paid a security deposit of \$727.50 on June 24, 2011, as well as a \$100.00 deposit for keys.

On June 28, 2011, the Tenant gave the Landlord a written notice he was vacating the rental unit effective on July 31, 2011. The Tenant gave the reason for moving as, "unlawful entry to suit noise complain that are not true." [Reproduced as written.]

The Tenant vacated the rental unit and a move out condition inspection report was performed on August 3, 2011. In the report it is noted that the stove, oven and some cupboards require cleaning, as well as some general cleaning in the rental unit. Total cleaning charges are set out as \$101.92.

The Landlord claims the Tenant failed to pay all the rent for July and owes a balance of \$339.50. The Landlord has also requested payment of a utility bill for hydro in the amount of \$32.50 that the Tenant did not pay, as well as unpaid parking charges of \$21.00.

The Landlord also claims for liquidated damages for breach of the term tenancy agreement. In section 2.1(b) of the lease, the Tenant is required to pay liquidated damages for breaking the lease early, in an amount equivalent to one month of rent.

The Agents testified that the Landlord advertised the rental unit as soon as possible and were able to have a new renter move into the rental unit on August 21, 2011. Therefore, the Landlord is seeking pro-rated liquidated damages for 20 days in August, in the amount of \$891.86.

In support of the claims, the Landlord submitted invoices, receipts, the tenancy agreement, the incoming and outgoing condition inspection reports, calculations of amounts due and the Notice to End Tenancy of the Tenant.

The Tenant did not submit any evidence in response to the Landlord's claim.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the Tenant breached the Act and tenancy agreement by ending the tenancy contrary to the Act and tenancy agreement.

Under section 45 of the Act, the Tenant is not allowed to end a fixed term tenancy prior to the end of the term. If the Landlord had breached a material term of the tenancy agreement and the Tenant requested in writing that the Landlord correct the situation within a reasonable time, and it was not corrected by the Landlord, then the Tenant could have ended the tenancy under section 45(3) of the Act. However, there is insufficient evidence from the Tenant in this case that would support any claim that the Landlord breached a material term of the tenancy agreement.

Therefore, I find the Tenant breached the Act and tenancy agreement by unlawfully ending the tenancy.

The Landlord mitigated the loss, as required by the Act, and had new tenants move into the rental unit on August 20, 2011. Therefore, I find the Landlord is entitled to liquidated damages equivalent to the lost rent due to the Tenant's breach in the amount of \$891.86.

Furthermore, I accept the uncontradicted evidence of the Landlord that the Tenant failed to properly clean the rental unit, or pay all the bills, or pay for the portion of parking claimed. The condition inspection report was performed and the stove, oven and portions of the rental unit were not cleaned and the Tenant did not dispute this. I find that the Tenant shall pay for parking, cleaning and utilities, and for the Landlord's application fee for the filing of this claim.

Therefore, I find that the Landlord has established a total monetary claim of \$1,436.78, comprised of \$339.50 for unpaid July rent, \$891.86 in liquidated damages for breaking the term lease, a hydro bill of \$32.50, cleaning of \$101.92, \$21.00 for parking, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord may retain \$827.50 from the deposits paid in partial satisfaction of the claim, and I grant the Landlord an order under section 67 for the balance due of **\$609.28**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court

This decision is final and binding on the parties, except as otherwise provided under the Act and 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: November 15, 2011.

Residential Tenancy Branch