



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee associated with this application.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a cottage. Pursuant to a written agreement that was not provided as evidence, the fixed term tenancy started on September 1st, 2010 for a period of one year that was extended until February 28th, 2012. The rent is \$850.00 per month and the tenants paid a security deposit of \$360.00. A condition inspection report was not completed at the start of the tenancy.

The landlord testified that he took possession of the rental unit late August 2010. He stated that on October 15th, 2011 he entered into a verbal agreement with the tenants to end the tenancy on October 31st, 2011. The tenants testified that they agreed to forfeit their security deposit and pay an additional \$490.00 to make up November 2011 rent if they could not find new tenants for that month. On October 23rd, 2011 the parties signed a mutual agreement confirming the above noted terms.

The landlord stated that the tenants provided him with a list of prospective new tenants but that the rental unit needed cleaning and was not ready for occupancy for November 1st. He said that there was not even time to re-rent so soon and that the tenants had changed their mind about paying for the loss of rental income. The landlord said that he altered his plans by renting his house and he himself moved into the rental unit in December 2011.

In his documentary evidence the landlord provided 8 photographs to support his claim that the unit was not clean, showing in part dusty areas on the floor and walls and a dirty stove top. The landlord submitted a monetary claim as follows:

- Security Deposit:	\$ 360.00
- Loss of rental income:	\$ 490.00
- Replace antique door:	\$ 200.00
- Filing fee:	\$ 50.00
- Total:	\$1100.00

In their documentary evidence, the tenants provided a copy of a Mutual Agreement to End Tenancy dated October 23rd, 2011, signed by both parties. The agreement specifies that;

- The tenancy ends on October 31st, 2011.
- The tenant allows the landlord to keep the security deposit.

- The tenant will pay an additional \$490.00 if the unit is not rented by November 1st, 2011 (amended from December 1st and agreed by both parties).
- The security deposit and the additional \$490.00 are the agreed terms for ending the fixed term tenancy prematurely.

The tenants also provided a copy of a condition inspection report form showing that an inspection was not conducted at the start of the tenancy, and that on move-out the form indicates that the cottage was left in the same condition.

They testified that they provided the landlord with interested candidates and that the landlord was not diligent to re-rent the unit as agreed. They stated that they spent 6 hours cleaning and do not agree with the landlord that the unit was left dirty. Concerning the \$200.00 claim for a broken door, the tenants stated that it was already damaged when they moved in and that they had permission from the previous owner to dispose of it.

Analysis

As stated during the hearing, the landlord's calculations need correction: the landlord kept the tenants' security deposit and as such that amount should be deducted from the sum of the claim and not added. Therefore the amount claimed ought to reflect \$380.00 and not \$1100.00.

Section 23(3), (4), and (5) of the Act places the onus to complete condition inspection reports on the landlord. The landlord's claim was not supported by these reports, and the Act states that the landlord's right to claim against a security deposit is extinguished without them. Therefore the landlord's photographic evidence is of little value as it does not allow me to determine whether the unit was in any better condition when the tenants moved in than when they moved out, or to ascribe a monetary value for damages

beyond reasonable wear and tear caused by these tenants. The landlord did not provide sufficient evidence and I dismiss this aspect of his claim.

Concerning the claim for the loss of rental income; Section 45(2) of the Act states in part 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. However, the landlord forfeited his right to claim against the tenants when he signed an agreement that the tenancy came to an end on October 31st, 2011. At issue is whether the tenants should pay any amount to the landlord for the loss of rental income after that date, as stated in the agreement.

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of a loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the landlord to prove his claim against the tenants.

I am not persuaded on the evidence that the landlord proved, on a balance of probabilities, that the tenants breached their end of the mutual agreement. The landlord stated that he changed his mind in November and decided to occupy the rental unit. First, whether the landlord chose to re-rent or not, as stated earlier the landlord did not provide sufficient evidence to prove that the rental unit was not rentable for November at the fault of the tenants. Second, the landlord departed from the terms of the agreement he made with the tenants when he decided to occupy the rental unit and to rent his house instead. The landlord has not proven that the tenants violated the Act or the agreement and therefore I dismiss this aspect of the landlord's claim.

Conclusion

The landlord's application is dismissed. I order the landlord to return the tenants' security deposit by way of a monetary order to the tenants for \$360.00.

This Order may be registered 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: January 19, 2012.

Residential Tenancy Branch