



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the tenant: as an application for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; for the return of the security and pet damage deposit; and to recover the filing fee associated with this application.

By the landlord: as an application for a Monetary Order for damage to the unit; for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; for unpaid rent; and to recover the filing fee associated with his application.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to the return of the security deposit?

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 an apartment in a multi-unit complex. Pursuant to a written agreement, the fixed term tenancy was based on a one year lease, starting on March 1st 2009 and ending February 28th, 2011. The rent was \$750.00 per month. The tenant paid a security deposit of \$375.00, and a pet damage deposit of \$200.00. Condition inspection reports were completed at the start and the end of the tenancy.

The tenant's application specifies that she broke the tenancy agreement because of noise and claims \$25,000.00 for moving costs, and pain and suffering due to sleepless nights. She testified that she gave notice to end tenancy on September 16th, 2009, and moved out on October 31st, 2009. She said that she mailed her forwarding address to the landlord in November 2009. Concerning the \$25,000.00 claim, the tenant stated that she moved out on October 31st, 2009 because the landlord failed to deal with complaints about the noise coming from the upstairs tenants.

The landlord testified that he never received the tenant's letter concerning the forwarding address. He stated that he mailed the tenant's security and pet damage deposit to the address stated on the condition inspection report, and that it was returned as an invalid address. He stated that he obtained knowledge of the tenant's current address upon receipt of the tenant's application for dispute resolution dated October 20th, 2011, and that he subsequently filed his application on October 31st, 2011.

Concerning the noise issue, the landlord stated that he did deal with the upstairs tenants, which resulted in their ending of the tenancy and moving out of the rental unit.

The landlord's monetary claim is as follows:

- Carpet cleaning:	\$ 56.00
- Liquidated damages:	\$ 300.00
- Move-in bonus:	\$ 250.00
- Unpaid rent for November 2011:	\$ 750.00
- Late fee:	\$ 20.00
- Filing fee:	\$ 50.00
- Sub-total:	\$1426.00
- Less security and pet deposits:	\$ 575.00
- Total:	\$ 851.00

Analysis

Concerning the tenant's claim for pain and suffering, Section 7(2) of the *Act* states in part that a party who claims for compensation for damage or loss must do whatever is reasonable to minimize the damage or loss. The burden is on the tenant to prove how the landlord was responsible for a loss that would warrant such an amount. The tenant has failed to show how she mitigated her loss by avoiding the alleged pain and suffering; a remedy for the tenant would have been to seek assistance through dispute resolution to resolve the issue if the landlord failed to attend to the issue. In this case the tenant chose to end the tenancy prematurely. She provided no details concerning the noise, or material evidence to substantiate the quantum of her claim, such as medical reports and associated costs; and I further take into account that she made this claim nearly two years after the tenancy ended. The award for damages must be compensatory, as I have no authority to award punitive damages. For these reasons I dismiss this aspect of the tenant's claim.

Concerning the tenant's claim for the return of the security deposit; Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

I am not persuaded in this case that the landlord received the tenant's correct address, as the evidence showed that the one on the condition inspection report was incomplete; the landlord made attempts to mail the tenant at that address but delivery was unsuccessful. The landlord made further attempts to locate the tenant and I am satisfied that he did eventually obtain the tenant's correct address by the time he received the tenant's application for dispute resolution dated October 20th, 2011. The landlord filed his application within 15 days from that date and therefore I find that the landlord complied with the Act.

Turning to the landlord's claim; the liquidated damages clause is triggered when the landlord opts to treat the tenancy as ended, as opposed to affirm the contract and the tenant's obligation to pay rent. Therefore it requires the landlord to make a choice; if the landlord claims the liquidated damage amount, then he must treat the contract agreement as being at an end. The landlord cannot on one hand end the agreement, and on the other hand demand that the tenant abides by the agreement and claim for future loss. Therefore I dismiss the landlord's claim for unpaid rent.

Section 45(2) of the *Residential Tenancy 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. As stated earlier the tenant's remedy would have been to make an application for dispute resolution if the landlord failed to tend to her complaint; in this case she ended the tenancy prematurely and breached the Act and the contract agreement. Therefore I award the landlord the liquidated damages of \$300.00 and the move-in allowance of \$250.00 as claimed.

The condition inspection report showed a cost for carpet cleaning which the landlord amended to \$56.00 at the hearing. The tenant signed the report and did not dispute this aspect of the landlord's claim. Therefore I award the landlord the cost of carpet cleaning as claimed.

Conclusion

The landlord established a claim of \$606.00. I authorize the landlord to retain the tenant's \$575.00 security and pet damage deposit for a balance owing of \$31.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$81.00.

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 03, 2012.

Residential Tenancy Branch