



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, MNDC, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the costs of cleaning, loss of income and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim against the security deposit and if so in what amount? Is the landlord entitled to loss of income and to recover the filing fee?

Background and Evidence

The tenancy started on February 28, 2011 for a fixed term of one year. The monthly rent was \$725.00. Prior to moving in, the tenant paid a security deposit of \$362.50 and a pet security deposit of \$150.00.

The parties communicated primarily by email. On August 29, 2011, the tenant emailed the landlord with a note entitled "*Official Notice to end tenancy*". The landlord responded to the note on August 30, informing the tenant that he was out of town and would return on September 05, at which time he would call the tenant to discuss the notice to end tenancy. The landlord copied a section of the guide into his note entitled "*How can a tenant end a tenancy?*"

Both parties agreed that a mutual agreement was made on September 24, 2011. The landlord agreed to release the tenant from her fixed term lease if she allowed the landlord to retain the security and pet deposits and pay the landlord an additional amount of \$225.00. The tenant agreed to do so.

The tenant moved out on September 24, 2011. On October 04, 2011 the landlord sent the tenant an email with an amendment to their agreement. The landlord wanted the tenant to pay an additional \$75.00 for cleaning. The tenant did not agree to pay this amount. She stated that she had hired a professional cleaner and had left the unit in a clean condition.

The landlord did not file any evidence to support his claim for \$75.00 for cleaning. During the hearing, the landlord withdrew his claim for the cost of cleaning.

The tenant stated that on October 08, 2011, as per the initial agreement made on September 24, she mailed the landlord a cheque in the amount of \$225.00. The landlord stated that as of October 21, 2011 he had not received a cheque and therefore he filed this application. The landlord agreed that he had received and cashed the cheque in November.

The landlord stated that he did not accept the tenant's notice to end tenancy because it was not in a written format and accordingly he did not make any efforts to find a new tenant, during the month of September. The landlord stated that a new tenant was found for December 15, 2011 at a reduced rent in the amount of \$695.00. The landlord stated that he suffered a loss of income for the months of October, November and half of December in addition to a rent decrease of \$30.00 per month for the balance of the fixed term.

The landlord is claiming the following:

1.	Loss of income for October and November	\$1,450.00
3.	Rent differential for January and February 2011	\$45.00
4.	Mailing costs	\$23.00
5.	Filing fee	\$50.00
	Total	\$1,945.50

Analysis

Loss of income for October 2011 to February 2012

Pursuant to section 44(1)(c) of the *Residential Tenancy Act*, a tenancy ends if the landlord and tenant agree in writing to end the tenancy. In this case the landlord agreed via email, to release the tenant from the lease if she allowed him to retain the deposits and pay an additional \$225.00, which would cover rent for October. Since the tenant paid \$225.00 and allowed the landlord to keep the deposits, I find that she was relieved of her obligations with regard to the fixed term lease.

In addition, Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

In this case, the landlord did not make any efforts to look for a new tenant during the month of September. The landlord stated that the reason for not doing so was that the tenant had given him notice to end tenancy via email and that he had not accepted it.

Based on the copies of emails filed into evidence by both parties, I find that this was the primary mode of communication and that the landlord was informed on August 29 that the tenant would be moving out on September 30. The landlord did not make efforts to mitigate his losses by attempting to find a tenant for October and therefore is not entitled to the loss of income he states he incurred due to the breaking of the fixed term lease by the tenant.

However, since the parties came to a mutual agreement regarding payment to cover the landlord's loss of income and the tenant has made payment, I find that the landlord may retain both the deposits as per the agreement. I dismiss the balance of the landlord's claim for loss of income.

Mailing costs - \$23.00

The legislation does not permit me to award any litigation related costs other than the filing fee.

Filing fee - \$50.00

The landlord has not proven his claim and therefore must bear the cost of filing his application.

Conclusion

Pursuant to the mutual agreement, the tenant has paid the landlord \$225.00 and I allow the landlord to retain the security and pet deposits. The balance of the landlord's application is dismissed.

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 11, 2012.

Residential Tenancy Branch