



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with cross applications. The tenant had applied for return of double the unreturned portion of her security deposit and pet deposit. The landlord indicated a claim for unpaid rent and utilities in the dispute code section of the landlord's application; however, in the details of dispute it is clear the landlord was also seeking liquidated damages; and, compensation for rubbish removal; and re-keying the unit. I found the landlord's application sufficiently identifies amounts the landlord is seeking to recover other than unpaid rent and I amend the application to indicate the landlord is seeking damages or loss under the Act, regulation or tenancy agreement.

Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

During the hearing the tenant withdrew her application for return of double the unreturned portion of her security deposit as the landlord did refund the portion calculated and requested by the tenant's lawyer after deducting monies for overholding. I proceeded to hear from the parties with respect to the landlord's claims for unpaid rent or loss of rent.

Issue(s) to be Decided

1. Is the landlord entitled to compensation for unpaid or loss of rent for the period after September 17, 2011?
2. Is the landlord entitled to liquidated damages?
3. Is the landlord entitled to compensation for rubbish removal and re-keying the rental unit?

Background and Evidence

The rental unit is the main level of the house and there is a second rental unit on the lower floor of the house. The landlord and tenant executed a tenancy agreement for a

fixed term tenancy starting October 15, 2009 and ending August 31, 2010 for a monthly rent of \$2,400.00 and payment of a \$1,200.00 security deposit and a \$1,200.00 pet deposit. The tenancy agreement provided that at the end of the fixed term the tenancy would be at an end and the tenant would have to vacate. However, after the fixed term ended the tenant continued to reside in the rental unit and pay the landlord an agreed upon monthly rent of \$2,100.00.

In August 2011 the parties entered into discussions about the continuation of the tenancy. The landlord emailed the tenant a tenancy agreement and requested that she sign and initial in the spaces indicated. The tenant initialled the spaces but did not sign the agreement. The landlord picked up the initialled tenancy agreement from the residential property on September 3, 2011 along with a cheque for September's rent and a post-dated cheque for October 2011 rent. On September 5, 2011 the rent cheque was returned for a stop-payment and on September 8, 2011 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant vacated the rental unit September 17, 2011.

The tenant's lawyer requested the landlord return \$1,248.00 of the deposits after deducting \$1,152.00 as compensation for the tenant "overholding" the unit 17 days in September 2011. The landlord paid the sum to the tenant's lawyer and filed his Application for Dispute Resolution.

Although the landlord was of the position he suffered damages greater than \$5,000.00 he limited to claim to avoid the additional filing fee payable. The landlord identified the following claims in his application and the following claims in his written submission:

<u>Description</u>	<u>Amount claimed on application</u>	<u>Amount requested in submission</u>
Liquidated damages	4,200.00	Not claimed
Suite cleaning	Not claimed	201.60
Locksmith	125.00	203.56
Carpet cleaning	Not claimed	392.00
Rubbish removal	<u>750.00</u>	<u>1,164.35</u>
Total	\$ 9,275.00	\$ 6,861.51

The landlord submitted that the landlord and tenant had amended the tenancy agreement to reflect an expiry date of a fixed term tenancy to August 31, 2012. The

landlord purports that this is evidenced by the tenant's initials next to numerous changes to the tenancy agreement, the tenant's intentions that were communicated to the landlord via email; and in giving the landlord rent cheques for September and October 2011. The landlord submitted that the tenant breached the fixed term tenancy agreement entitling him to compensation for unpaid rent until November 11, 2011 and liquidated damages.

The landlord testified that he started advertising the rental unit in mid-September 2011 online and in two main publications. The landlord re-rented the unit effective November 11, 2011 for a reduced rent of \$1,900.00 per month. The landlord submitted that the lower rent reflects the decreased demand for the time of year.

The landlord acknowledged that he did not prepare condition inspection reports but is claiming for cleaning of the unit and property. After the tenant vacated the landlord had to hire cleaners, a locksmith, carpet cleaners and people to haul away rubbish. The landlord is claiming 2/3 of the cleaning invoice as the cleaners also cleaned the other rental unit on the property. The landlord submitted that the tenant did not clean the kitchen appliances, cupboards or floors sufficiently and that the cleaners had to clean the bathrooms. The landlord stated that he removed bags of clothes from the rental unit and had to haul away wood, rags, pots and pans, items under the front steps, tires, car parts and an appliance from the property. In addition, the landlord submitted that he had to have five locks changed after the tenancy ended.

The tenant provided the following responses to the landlord's claims. The tenant and the landlord discussed extending the tenancy and she did initial the spaces on the tenancy agreement that was emailed to her; however, the tenant did not sign the agreement. The tenant acknowledged leaving the initialled tenancy agreement for the landlord to pick up and submitted that it was her understanding the landlord would review it and then it would be signed at the conclusion of their meeting scheduled for September 5, 2011 at 1:30 p.m.

The tenant stated that the purpose of the meeting was to further discuss some additional terms with the landlord. The issues the tenant intended to discuss were repairs and the ability to sublet the property for six months. The tenant testified that their communication was breaking down using email, as seen in emails exchanged with each other August 30, 2011, and that she wanted to meet with the landlord face-to-face before signing the agreement.

The landlord stated he was unsure as to the purpose of the meeting but acknowledged that he had agreed to meet with the tenant, conditional upon his family obligations.

It was undisputed that when the tenant called the landlord on September 5, 2011 the landlord advised the tenant he would not be able to meet with her. The tenant claimed the landlord told her that meeting with her was not important enough. The tenant acknowledged she was upset with this information as she had been out of town and had returned early so that she could make the meeting with the landlord. The tenant explained that since the landlord did not treat meeting with the tenant with any importance the tenant was not interested in continuing with the tenancy. She proceeded to put a stop payment on the cheques she had left for the landlord.

With respect to cleaning and garbage removal the tenant made the following submissions: the tenant is a professional cleaner and she left the rental unit very clean. The tenant rented a steam cleaner to clean the carpets. The tenant took pictures of the rental unit on September 17, 2011 as evidence of its condition. Any rubbish removed by the landlord was rubbish that was there at the beginning of the tenancy.

Documentary evidence provided for this proceeding included copies of: numerous emails between the parties; the tenancy agreement signed by both parties in 2009; the tenancy agreement emailed to the tenant on August 31, 2011; the initialled tenancy agreement picked up by the landlord on September 3, 2011; the 10 Day Notice to End Tenancy; a letter that accompanied the 10 Day Notice; advertisements for the rental unit posted online; supporting documentation for the rubbish removal; locksmith; carpet cleaning; and suite cleaning. I was also provided photographs of the unit and property as well as the tenancy agreement for the replacement tenants.

Analysis

Upon review of the tenancy agreements included in the evidence I find that the only fully executed agreement between the parties was the agreement for a fixed term that expired August 31, 2010 with the provision that the tenancy would end at that time. I was not provided evidence that the tenant signed a written tenancy agreement other than the one that expired August 31, 2010.

While the tenant did initial the agreement that was emailed to her in August 2011 she did not sign it, despite the landlord requesting her to sign the tenancy agreement in two email communications. On August 31, 2011 the landlord attached the tenancy agreement to an email and asked the tenant to **"Please sign and initial** and send back to me." The tenant later emails the landlord asking about circumstances where utilities not paid by tenants in the basement suite and her concerns that she would be responsible if the basement suite tenants do not pay their share. On September 1,

2011 the landlord responds by indicating he sent an email to the basement suite tenants and to **"Pls ensure that signed agreement (in full) and sept payment is in the freezer."**

Also included in the tenant's evidence package was a type-written letter from the landlord dated September 6, 2011 which is the same date the 10 Day Notice was issued and appears to have accompanied the 10 Day Notice. It includes the statements:

- "You are occupying our property without a valid Tenancy Agreement. As such, you are now trespassing";
- "You are occupying our property without payment of rent. As such, you are now trespassing."
- "You must vacate the premises by September 17, 2011."

Based on the above, I find the landlord requested the tenant sign the written agreement and it appears he recognized that she did not sign it in his communication to her on September 6, 2011. The landlord submitted that I should look to the parties' intentions in considering the landlord's position that a new fixed term tenancy agreement had been entered into. In considering the parties intentions, I accept that the landlord intended to secure a signed fixed term agreement with the tenant for a term of September 2011 through August 2012 but that such an agreement was not reached.

Since the tenant continued to reside in the rental unit after August 2010 with the landlord's apparent agreement and the parties had reached an agreement with respect to the new monthly rent of \$2,100.00 I find the parties had either a verbal or implied tenancy agreement after August 31, 2010. Without a signed written agreement providing for the necessary information that must accompany a fixed term tenancy then by default I find the tenancy was on a month to month basis as that is the consistent with the timing of the rent payments. Therefore, I find the provisions of the Act that deal with ending a month-to-month tenancy apply.

Where a tenant wishes to end a month-to-month tenancy the tenant must give at least one full month of written notice to the landlord. I find the tenant did not give such notice to the landlord. Accordingly, the tenant breached the Act by giving the landlord insufficient notice to end the tenancy and by not paying rent.

The first indication the landlord had that the tenant would be ending the tenancy was September 5, 2011. Had the tenant given written notice to end the tenancy September

5, 2011 the effective date of the notice would have been October 31, 2011 under the requirements of the Act.

I find the landlord acted reasonably in advertising the unit in a timely manner and I find the tenant responsible for unpaid rent for the month of September and October 2011, less the amount already compensated to the landlord for the period of September 1 through September 17, 2011. Therefore, the landlord is awarded unpaid rent of \$3,048.00 calculated as [$\$2,100.00 + \$2,100.00 - 1,152.00$].

The landlord's claim for unpaid rent for November 1 - 11, 2011 has not been considered further as the tenant's obligation under a month-to-month tenancy ended October 31, 2011. I also deny the landlord's claim for liquidated damages as there was not a valid fixed term agreement in place when the tenancy ended.

I deny the landlord's claims for cleaning and carpet cleaning as these claims were not identified on the application and in the absence of condition inspection reports that the landlord was required to complete; the lack of detail on the cleaning invoices; and upon review of the photographs taken by the tenant.

Considering the large rubbish removal invoice, I find the landlord did not satisfy me as to what rubbish had to be removed or that the rubbish belonged to the tenant. In the absence of condition inspection reports; a detailed rubbish removal invoice; or photographs showing the rubbish that had to be removed, I find the landlord did not provide a sufficient rebuttal to the tenant's submission that the garbage was pre-existing and from the other tenants. Therefore, the rubbish removal claim is denied.

With respect to the locksmith charge, the tenant did not deny the landlord had to have the locks changed but questioned the need to have five locks changed. I note that the landlord's claim for locksmith costs on the application is less than the amount requested in his submission even though the locksmith had invoiced the landlord before the application was made. I also note that the landlord did not amend his application in accordance with the Rules of Procedure. Therefore, I award the landlord the lesser amount of \$125.00 as claimed on the application.

Considering the relative success of the landlord, the landlord is awarded one-half of the filing fee paid for his application.

The landlord is provided with a Monetary Order calculated as follows:

Unpaid rent (September and October 2011)	\$ 3,048.00
Locksmith	125.00
Filing fee	<u>25.00</u>
Monetary Order	\$ 3,198.00

To enforce the Monetary Order it must be served upon the tenant and it may be enforced in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The landlord was partially successful in this application and has been provided a Monetary Order in the amount of \$3,198.00 to serve upon the tenant.

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 10, 2012.

Residential Tenancy Branch