



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord only. The tenant did not attend.

The landlord testified he served the tenant with the notice of hearing documents and his Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on December 16, 2011 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for damage to the unit; for compensation for damage or loss under the *Act*, regulation or tenancy agreement, for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 35, 36, 37, 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord testified the tenancy began on July 1, 2010 as a 1 year fixed term tenancy that converted to a month to month tenancy on July 1, 2011 for a monthly rent of \$850.00 due on the 1st of each month with a security deposit of \$425.00 paid.

The landlord testified that he was informed the tenant was moving out when he received a call from the tenant's ex-husband on December 1, 2011 indicating she was moving

out at that time. The landlord went to the rental unit and found the tenant was vacating the unit. The landlord testified that at that time the tenant confirmed her forwarding address.

The landlord considers that since the tenant provided him with no notice of her intent to end the tenancy until he found her vacating the unit that the earliest the tenant could end the tenancy would have been January 31, 2012.

The landlord testified that he had two vacancies at the time the tenant vacated and that he had received appropriate notice from the other tenant who was vacating another unit and that the two units were the same except that one was on the west side of the building and the other on the east side. The landlord found one tenant to whom he gave the choice of either unit and the new tenant chose this unit and started a new tenancy on January 1, 2012.

The tenant did not participate in a final move out inspection as she refused to set up a schedule with the landlord to complete an inspection.

The landlord seeks the following compensation:

Description	Amount
Rental Arrears	\$462.67
Unpaid Rent/Short Notice	\$1,700.00
Painting	\$761.60
Cleaning	\$173.83
Repairs – labour	\$204.00
Repairs – supplies	\$275.67
Replacement blinds	\$179.13
Rekeying of locks	\$56.00
HST	\$20.86
Total	\$3,833.76

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;

3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45 states a tenant may end a tenancy by providing the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice. As such and based on the landlord's undisputed testimony, I accept the landlord's position that the earliest the tenant could have ended the tenancy was January 31, 2012. Therefore I find the tenant is responsible for the payment of rent until January 31, 2012.

Section 7, however states that a landlord who claims compensation for damage or loss that results from the other's non-compliance with the *Act* must do whatever is reasonable to minimize the damage or loss.

From the landlord's testimony, I accept that he had two units to rent at the same time and that he has only found one tenant, who chose this unit to rent effective January 1, 2012. As a result, I find the landlord did take all reasonable steps to mitigate his loss of rental income in relation to this tenancy.

Despite the landlord's predicament that he had two units available and has only been able to rent this unit, I find, in the case before me the losses suffered by the landlord for being unable to rent another rental unit cannot be considered loss from this rental. As such, I find the landlord has received rent for January 2012 for this unit and I dismiss the portion of the landlord's Application for the rent for January 2012.

In relation to the landlord's claim for rental arrears, I accept the accounting in the tenant's ledger that the tenant had an arrears account totalling \$462.67 and the landlord is entitled to this compensation.

From the evidence before me, both the documentary evidence of the condition inspection reports and the photographs and in the absence of any contradictory testimony from the tenant I accept the tenant is responsible for the repairs and replacements, cleaning, locks changes and painting.

The landlord provided no testimony or evidence as to why the tenant would be held responsible for a separate charge of \$20.86 for HST as such, I dismiss this portion of the landlord's Application.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,012.90** comprised of \$1,312.67 rent owed; \$761.60 painting; \$173.83 cleaning; \$479.67 supplies and repairs; \$179.13 replacement blinds; \$56.00 rekeying and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit held in the amount of \$425.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,587.90**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: February 24, 2012.

Residential Tenancy Branch