



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 hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent and compensation for loss under the act and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to a monetary order for loss under the Act?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a twelve month fixed term tenancy on September 30, 2011.. Rent in the amount of \$1,350.00.00 was payable on the first of each month. A security deposit of \$675.00 was paid by the tenant.

The parties agree the tenant vacated the rental unit on October 15, 2011.

The landlord claims as follows:

a.	Unpaid rent for October 2011	\$1,350.00
b.	Loss revenue for November & December 2011	2,700.00
c.	Rent difference January - September 2012	450.00
d.	Hydro for October, November & December 2011	135.00
e.	Strata move in fee	200.00
f.	Mail box Key Change	68.94
	Total claimed	\$4,903.94

The landlord testified the tenant first looked at the rental unit on September 18, 2011 and paid a security deposit for the rental unit. However, the tenant's cheque was returned for insufficient funds.

The landlord testified that on September 30, 2011, the tenant came and looked at the rental unit again, paid cash for the security deposit and signed a twelve month fixed term agreement.

The landlord testified the tenant moved into the rental unit on October 1, 2011 and the tenant decided to move out of the rental unit on October 15, 2011. The landlord states that the tenant did not pay rent for October 2011, in the amount of \$1,350.00.

The tenant testified that she did leave the rental unit on October 15, 2011 and text messaged the landlord to keep the security deposit.

The tenant testified that after she had moved in the rental unit, she noticed significant damage to the unit. The tenant states she did not notice the damage when she viewed the rental unit because it was dark outside.

The tenant testified she text message the landlord about her concerns and later decided the rental unit was unliveable and gave notice to the landlord that she would be leaving the rental unit on October 15, 2011.

The landlord testified that as soon as the tenant moved out of the rental unit, he immediately advertised the rental unit of two websites and on November 29, 2011, entered into a new fixed term agreement commencing December 15, 2011.

The landlord testified the new tenancy agreement rent is \$1,300.00 per month, which is \$50.00 per month less than the tenants fixed term agreement.

The landlord states he is seeking loss revenue for November 2011 and December 2011 in the amount of \$2,700.00 and is seeking to recover the difference between the two rents until the expiry of the tenants fixed term agreement in the amount of \$450.00.

The tenant testified that when she entered into the fixed term agreement the landlord told her that he had lots of people interested in the rental unit and she should not have to compensate the landlord for any loss of rent.

The landlord testified that he is seeking compensation for hydro as the hydro account was still in the previous tenants name and the previous tenants want him to compensate them in the amount of \$135.00.

The tenant testified that she had they hydro put in her name.

The landlord testified he had to pay a strata move in fee for the tenant in the amount of \$200.00 and is seeking compensation. The landlord states that he normally does not

recover the fee, but feels since the tenant breach the fixed term agreement that he is entitled to compensation.

The tenant testified that she never agreed to pay a strata move in fee and the issue of a strata fee was never discussed with the landlord.

The landlord argued that if the tenant had honoured the fixed term agreement, he would have recuperated the cost of the strata fee over the term of the tenancy.

The landlord testified that when the tenant vacated the rental unit she did not return the mail box key and was required to have the mail box key changed and is seeking compensation in the amount of \$68.94.

The tenant acknowledges she did not return the mailbox key or the cost of having it the mail box key changed.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The parties agree they entered into a fixed term agreement on September 30, 2011 and the tenancy commenced on October 1, 2011.

Section 26 of the Act states - Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, the tenant moved into the rental unit on October 1, 2011, and in the tenancy agreement rent is due on the first of each month. Therefore, I find the tenant has breached section 26 of the Act and the landlord is entitled to compensation for October 2011, unpaid rent in the amount of **\$1,350.00**.

The evidence of the tenant was once she had moved into the rental unit she noticed significant damage and found the rental unit was not liveable and moved out. However, I note the tenant viewed the rental unit on September 18, 2011 and again on September 29, 2011, one day prior to her moving to the rental unit. I find the evidence of the tenant is not conceivable, that she would not have notice such significant damage, that would make a rental unit unliveable at that time.

The Residential Tenancy Act states - Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(b) is **not earlier than the date specified in the tenancy agreement** as the end of the tenancy.

I find that the tenant has breached section 45 of the Act as the earliest date she could have legally ended the tenancy was October 1, 2012, as stated in the tenancy agreement.

The Residential Tenancy Act states - Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The evidence of the landlord was that he immediately posted the rental unit on two websites, and that he had a few people view the property, but it was not until November 29, 2011, when he entered into a new fixed term tenancy agreement and the tenancy commenced on December 15, 2011. Therefore, I find that the landlord is entitled to recover loss of rent for November 2011, rent in the amount of **\$1,350.00**.

As the new tenancy agreement commenced on December 15, 2011, the landlord is entitled to loss of rent for December 2011, however, as the new tenancy agreement started on December 15, 2011, the landlord is not entitled to be compensated for the full amount by the tenant. As the tenants rent was \$1,350.00 per month that rent is reduced by \$650.00, as the new tenants were obligated to pay a portion of December 2011, rent. Therefore, the landlord is entitled to loss rent for December 2011, in the amount of **\$700.00**.

I find that landlord is entitled to compensation for the remaining nine months of the fixed term tenancy agreement. The landlord is entitled to receive the difference between what they would have received from the defaulting tenant and what they were able to re-rent the premises for. Therefore, the landlord is entitled to compensation in the amount of **\$450.00**.

The evidence of the landlord is that the tenant did not change the hydro account into her name and that he will have to compensate the previous tenant is the amount of

\$135.00. The evidence of the tenant was that the hydro account was in her name. I find that the landlord has not submitted sufficient evidence to prove that he suffered a loss. Therefore, I dismiss the landlords request for compensation for hydro costs.

The evidence of the landlord was he paid a move in strata fee in the amount of \$200.00. The evidence of the tenant was a move in strata fee was never discussed. As there was no discussion between the parties about the payment of a strata move in fee, I find the landlord is not entitled to be compensated for the move in strata fee. Therefore, the landlords claim for compensation for the strata fees is dismissed.

The evidence of the tenant was that she lost the mail box key and does not dispute the landlords claim for compensation. Therefore, the landlord is entitled to recover **\$68.94** to have the mail box key changed.

I find that the landlord has established a total monetary claim of **\$3,968.94** comprised of the able amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$675.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$3,293.94**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order and may keep the security deposit as partial satisfaction of the claim, and is granted an order for the balance due.

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 27, 2012.

Residential Tenancy Branch