



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 was convened by way of conference call in repose to the landlords application for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

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 money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both parties agree that this tenancy started on October 01, 2011. This was a fixed term tenancy which was due to expire on April 30, 2012. The tenant gave Notice to end the

tenancy on November 17, 2011 and vacated the rental unit on November 30, 2011. Rent for this unit was \$360.00 per month plus \$140.00 for utilities. The tenant paid a security deposit of \$250.00 on October 01, 2011.

The landlord testifies that the tenant did not give proper notice to end the tenancy. The landlord testifies that the tenancy agreement states the tenant must give one clear months notice to end the tenancy. The landlord testifies that she re-rented the tenants room on January 01, 2011 and had already released the tenant from his obligation for the fixed term of the tenancy. The landlord seeks to recover unpaid rent for December, 2011 to the sum of \$360.00.

The landlord testifies that the tenant damaged a desk of the landlords that was left in the tenant's room for him to use. The landlord testifies at the end of the tenancy this desk had not been replaced. The landlord testifies that the desk was in good condition at the start of the tenancy and it was the tenant's actions in moving the desk that caused the desk to break. The landlord testifies that the tenant put the desk out on the lawn and told the landlord he would replace it at the end of his tenancy.

The landlord states this was a strong desk and has provided a picture of the desk in the tenant's room. The landlord seeks to recover the sum of \$200.00 to replace this desk but states when she obtained quotes for the replacement of the desk these quotes came in at \$239.99 and \$269.99. The landlord has provided copies of the quotes in evidence.

The landlord seeks to keep the tenants security deposit of \$250.00 in partial satisfaction of her claim and seeks to recover the \$50.00 filing fee from the tenant.

The tenant disputes the landlords claim for unpaid rent. The tenant states he was forced to move from the rental unit because the landlord would harass the tenant and would not give the tenant privacy in his rental unit. The tenant testifies that the landlord would complain to the tenant if he left his window open at night and complained that the tenant had changed his light bulb for a different one. The tenant testifies that the landlord informed the tenant that he must live by the landlord's rules or get out of the unit. The tenant testifies that he wrote to the landlord about his concerns with her violating his privacy and the landlord's

response was that she would not force anyone to finish their contract and the landlord accepted the tenants notice to end tenancy effective on November 30, 2011.

The tenant testifies that when he moved into the unit there was internet service provided. The tenant testifies that they lost this service because the landlord did not pay her internet bill. The tenant testifies as he was studying for exams he required the use of the internet and had to stay at friends houses to get peace in order to study.

The tenant testifies that at the start of his tenancy there was a desk provided in his room. The tenant testifies that when he attempted to move this desk across the carpet the side panel/leg broke o from the doweling and could not be repaired. The tenant testifies he asked the landlord what he should do about the desk and states the landlord told the tenant to put the desk out on the lawn. The tenant testifies that later the landlord told the tenant to break the desk down and remove it. The tenant testifies that he is therefore not responsible for the replacement costs of the desk and states the landlord's quotes are much too high. The tenant has provided two quotes for a replacement desk of \$99.00 and \$138.00.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for unpaid rent; I refer the parties to s. 45(1) of the Act which states:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenant argues that he had to move out because the landlord did not respect his privacy and failed to provide services agreed upon. If this was the case the tenant's recourse would have been to file an application for Dispute Resolution for an Order for the landlord to comply with the *Act* and to provide services or facilities agreed upon. Instead the tenant made the decision to move from the rental unit. The landlord argues that this was a fixed term tenancy however she released the tenant from this term but still expected the tenant to adhere to the tenancy agreement in which the tenant must provide one clear month's written notice to end the tenancy. As the tenant only gave the landlord 17 days notice to end the tenancy I find the tenant is in breach of s. 45(1) of the *Act* as the tenant would still be required to give the landlord One Months Notice to end his tenancy even after the landlord agreed not to enforce the fixed term and the tenant failed to do so. Consequently, I find the landlord is entitled to recover the sum of **\$360.00** from the tenant for rent for December, 2011.

With regard to the landlords claim for replacement costs for the desk; in this matter I find that the tenant agrees he did break the desk when he dragged it across the carpet. From the evidence presented I find that the desk appears to be in good condition at the start of the tenancy. Consequently, I find the tenant was responsible for the damage to the desk and despite the tenants arguments that the landlord told the tenant to put the desk on the lawn and then to remove it, the fact remains that the tenant did damage the desk that required this action. Therefore, it is my decision that the landlord is entitled to recover a sum to replace the desk.

Both parties have sent in quotes for replacement costs for this desk. I find that the landlords quotes more closely match the pictures and content of the original desk and therefore find the landlord is entitled to recover the sum of **\$239.99** as this is the lower of the two quotes.

I further find the landlord is entitled to keep the security deposit of **\$250.00** in partial; satisfaction of the unpaid rent pursuant to s. 38(4)(b) of the *Act*.

As the landlord has been successful with their claim I find the landlord is also entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. The landlord will receive a Monetary Order for the following amount pursuant to s. 67 of the *Act*:

Unpaid rent for December, 2011	\$360.00
Replacement costs for the desk	\$239.99
Subtotal	\$599.99
Filing fee	\$50.00
Less security deposit	(-\$250.00)
Total amount due to the landlord	\$399.99

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$399.99**. The order must be served on the respondent and is enforceable through the Provincial Court 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 23, 2012.

Residential Tenancy Branch