



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNDC, MNSD, FF.

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for loss of income, liquidated damages, cost of repairs, return of rental rebate and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her monetary claim. The tenant applied for the return of double the security deposit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Did the landlord suffer a loss of income when the tenant broke the fixed term lease? Is the landlord entitled to a monetary order to recover the cost of repairs, liquidated damages, the rental rebate and the filing fee? Was the landlord negligent with regard to maintaining the rental property in a condition fit for occupancy? Did the tenant provide the landlord with his forwarding address in writing? Did the tenant give the landlord adequate notice to end the tenancy? Is the tenant entitled to the return of double his security deposit?

Background and Evidence

The tenancy started on March 01, 2011 for a fixed term ending February 29, 2012. The monthly rent was \$900.00 due in advance on the first day of the month. Since the tenant entered into a fixed term lease, the landlord offered the tenant a rebate of \$75.00 per month. The tenant signed an incentive agreement which contained a clause stating that the incentive would be clawed back by the landlord, in the event that the tenant moved out prior to the end of the fixed term. Prior to moving in, the tenant paid a security deposit of \$450.00.

The tenancy agreement contained a clause that states that in the event the tenant ends the fixed term tenancy before the end of the original term, the tenant is required to pay liquidated damages of \$350.00 to cover administrative costs of re-renting the unit. The landlord filed copies of the tenancy agreement and the incentive agreement.

The tenant stated that upon moving into the rental unit in March 2011, he noticed that rodents and cockroaches inside the rental unit. The tenant complained to the landlord about the problem on March 11, 2011. The landlord took immediate action and had the unit treated on March 14. The landlord testified that the tenant made two more complaints on June 29 and October 26. The landlord had the unit treated by a professional pest control company within a few days of each of the complaints.

The tenant stated that the complex was crime ridden and had a grow op. He stated that people loitered in the common areas and he did not feel safe inside the complex. On July 01, 2011, the tenant's baby was born. The tenant stated that he found the rental complex to be unsafe and unsanitary for his family and therefore he decided to move.

The tenant agreed that he did not give the landlord written notice to end the tenancy. He moved out on November 28 and handed the keys over to the resident manager. The manager conducted a move out inspection the next day in the absence of the tenant. The tenant agreed that he had made holes in the walls to hang pictures and had not repaired the walls prior to moving out.

The landlord advertised the availability of the unit and filed copies of the advertisements. A new tenant was found for December 15, 2011 and the landlord received \$464.52 from the new tenant, thereby suffering a loss of income of \$435.48 for the month of December 2011.

The landlord stated that since the tenant moved out prior to the end date of the lease, the tenant was not entitled to the rental rebate that he had received for the nine months of tenancy in the amount of a total of \$675.00. The tenant argued that he was forced to move out because of the unsafe conditions of the rental unit and the common areas.

The tenant gave the landlord his forwarding address on January 18, 2012 and the landlord made this application on January 19, 2012.

The landlord added that the rental complex is maintained on a regular basis and there is a pest control company that is on contract to conduct regular checks and treatments. The landlord stated that prior to a new tenant moving in, it is a practice to treat the rental unit for rodents, cockroaches etc.

The landlord is claiming the following:

1.	Repairs to the wall	\$50.00
3.	Liquidated damages	\$350.00
4.	Loss of income	\$900.00
5.	Filing Fee	\$50.00
	Total	\$2,025.00

Analysis

Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant.

In this case, I find that the landlord conducted regular maintenance of the property and had a professional pest control company on contract to deal with problems of infestation. The tenant made three complaints and in all three cases the landlord responded in a timely manner. Therefore I find that the landlord was not negligent with regard to their duties as a landlord. The tenant's argument that he moved out because of the pest problems does not excuse him from providing the landlord with adequate notice. The tenant resided in the rental unit for nine months before he decided that it was not fit for occupation. Accordingly, I find that by moving out prior to the end date of the fixed term lease, the tenant was non compliant with the terms of the tenancy agreement

Tenant's application:

The tenant has applied for the return of double his security deposit.

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

I find that the tenant provided his forwarding address in writing on January 18, 2012. I further find that the landlord made an application for dispute resolution on January 19, 2012, which is within 15 days of receiving the tenant's forwarding address in writing. Therefore, I find that the tenant is not entitled to the return of double the security deposit but is entitled to the return of the base amount of the security deposit.

Landlord's application:

1. Repairs to the wall - \$50.00

The tenant agreed that he had caused damage to the walls and therefore I find that the landlord is entitled to \$50.00 for repairs.

2. Rental rebate - \$675.00

The tenant signed the rental incentive agreement thereby agreeing to return the rental rebate in the event that the tenancy ended prior to the end date of the fixed term. The tenant received a rebate of \$75.00 per month for nine months. Since the tenancy ended prior to the end of the fixed term, the tenant must return the total of the rental rebate received by him. Therefore, I find that the landlord is entitled to \$675.00.

3. Liquidated damages - \$350.00

Pursuant to section 4 of the *Residential Tenancy Policy Guideline*, a liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. In this case, by signing the tenancy agreement the tenant agreed to pay \$350.00 as the cost to re-rent the unit in the event he ended the tenancy prior to the end date of the fixed term. Therefore, I find that the landlord is entitled to her claim of \$350.00 for liquidated damages.

4. Loss of income - \$435.48

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a fixed term tenancy by giving 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, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of the landlord, I accept the landlord's evidence in respect of the claim. In this case the tenant ended the fixed term tenancy prior to the end date and did not give the landlord the required notice of one month to end the tenancy. Accordingly, I find that the landlord is entitled to rent for the month of December.

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 advertised the unit and was successful in finding a tenant for part of December.

Since the tenant ended the tenancy prior to the end date of the fixed term and the landlord made attempts to mitigate her losses, I find that the landlord is entitled to the loss of income that she suffered for the balance of December 2012. Accordingly, the landlord is entitled to \$435.48

5. Filing fee - \$50.00

Since the landlord has proven her case, I find that she is also entitled to the recovery of her filing fee, in the amount of \$50.00.

Overall, the landlord has established a claim as follows:

1.	Repairs to the wall	\$50.00
3.	Liquidated damages	\$350.00
4.	Loss of income	\$435.48
5.	Filing Fee	\$50.00
	Total	\$1,560.48

I order that the landlord retain the security deposit of \$450.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1,110.48. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order in the amount of **\$1,110.48**.

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: March 22, 2012.

Residential Tenancy Branch