



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for compensation under the Act and the tenancy agreement, 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 landlord entitled to monetary compensation from the tenant?

Background and Evidence

The parties entered into a one year fixed term tenancy, commencing September, 1, 2011, which was to end on August 31, 2012. Rent in the amount of \$1,195.00 was payable on the first of each month. A security deposit of \$597.50 was paid by the tenant. Tenancy ended December 22, 2011.

The landlord claims as follows:

a.	Loss of rent for January 2012	\$578.22
c.	Filing fee	\$50.00
	Total claimed	\$928.22

The landlord's agent testified that the tenant terminated the one year fixed term agreement prior to the date specified in the tenancy agreement. The landlord's agent states they are seeking to recover a portion of loss rent for the month of January 2012. Filed in evidence is a copy of the tenancy agreement, signed by the parties.

The landlord's agent testified the rental unit was advertised in a local paper and on a website as soon as the tenant gave notice to end tenancy. The landlord's agent states a

new tenancy agreement was signed with new tenants, and tenancy commenced on January 16, 2012. The landlord is seeking to recover a portion of loss rent in the amount of \$578.22. Filed in evidence are copies of invoice for advertising the rental unit. Filed in evidence is the new signed tenancy agreement.

The landlord's agent testified they are seeking liquidated damages in the amount of \$300.00. The landlord's agent states this amount is specified in the tenancy agreement to cover the administration costs associated with re-renting the unit.

The tenant's agent testified the landlord was provided with one month notice to end tenancy. Therefore, the landlord is not entitled to further compensation.

Analysis

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

The evidence of the parties was a one year fixed term tenancy agreement commenced on September 1, 2011, which was to end on August 31, 2012.

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.

The evidence of the tenant's agent was the tenant gave one month notice to end tenancy and compensation should not be allowed. However, the tenant was not entitled to use the one month notice provisions of the legislation to end the tenancy prior to the end of the fixed term agreement.

Therefore, I find the tenant has breached section 45 of the Act as the earliest date the tenant could have legally ended the tenancy was August 31, 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 the rental unit was advertised in a local new paper and posted on a website. The evidence was the rental unit was re-rented commencing January 16, 2012.

Therefore, I find the landlord made reasonable efforts to minimize the loss of rent and is entitled to recover the portion of loss rent for January 2012, in the amount of **\$587.22**.

The tenancy agreement signed by the party's states, if the tenant terminates the fixed term agreement prior to the expiry of the agreement the tenant will pay \$300.00 as liquidated damages to cover the administrative costs. Therefore, I find the landlord is entitled to compensation in the amount **\$300.00**.

I find that the landlord has established a total monetary claim of **\$928.22** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlords retain the deposit of **\$578.22** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$330.72**.

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 in the amount of **\$330.72**.

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 19, 2012.

Residential Tenancy Branch