



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MND, MNR, MNSD, MNDC, FF

Tenant: MNDC, OLC, O, FF

Introduction

This hearing dealt with the cross Applications for Dispute Resolution with both parties seeking a monetary order. The tenant also seeks an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

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 April 17, 2012 in accordance with Section 89. The landlord provided a Canada Post tracking number and testified that he had a print out from Canada Post confirming the package was successfully delivered.

In addition, I note that the tenant submitted additional documentary evidence to the Residential Tenancy Branch (RTB) on April 30, 2012 that is clearly in response to the landlord's Application seeking damages to the rental unit and not only to the tenant's Application for compensation.

Based on the testimony of the landlord and the tenant's submission of documentary evidence in response to the landlord's claim, 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 compensation for damage or losses resulting from the tenancy; for damage to the rental unit; 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 37, 38, 45, 67, and 72 of the *Act*.

In addition it must be decided if the tenant is entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on December 24, 2011 for a 22 month and 1 day fixed term tenancy agreement beginning on January 1, 2012 and ending on November 1, 2013 for a monthly rent of \$2,595.00 due on the 1st of each month.

The landlord clarified during the hearing that end date of the fixed term was intended to read November 1, 2012 not November 1, 2013.

The landlord testified the tenant originally had requested to start the tenancy on January 7, 2012 and that as such he agreed to a reduced to rent for the month of January 2012. Subsequent to this the tenant identified on December 24, 2011 that her plans had changed and so she needed to move in to the rental unit right away.

The landlord indicates he agreed and allowed her to move in to the rental unit on December 24, 2011. The landlord seeks rent for the period between December 24, 2011 and December 31, 2011 in the amount of \$669.68 based on a per diem rate of \$83.71 and for the period January 1 to January 6, 2012 in the amount of \$595.00.

The landlord also seeks hydro charges for these same periods in the amount of \$13.65. Rent, according to the tenancy agreement submitted, did not include utility charges. In addition, the landlord seeks reimbursement for the \$100.00 moving fee required by the strata that the tenant failed to pay despite signing the Form K acknowledging receipt of the strata rules. The landlord also seeks compensation for the tenant's failure to return a bath towel he had loaned her at the start of the tenancy, in the amount of \$34.00.

The landlord seeks compensation for the condition of the rental unit at the end of the tenancy in the amount of \$220.00. The landlord submitted photographic and documentary evidence confirming scrapes and gouges on walls, doors and trim and dirty baseboards.

Analysis

As the tenant failed to attend this hearing and present her claim in support of her Application for Dispute Resolution, I dismiss the tenant's Application in its entirety without leave to reapply.

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.

From the undisputed testimony and documentary evidence of the landlord I find the parties had entered into a fixed term tenancy that obligated the tenant to the payment of rent for the duration of that fixed term or until November 2012. Further Section 45 states that a tenant may end a fixed term tenancy no earlier than the date specified in the tenancy agreement as the end of the tenancy. As such, I find the tenant is responsible for rent for the entire period until November 2012.

However, as the landlord was successful in renting the unit to new tenants effective April 15, 2012, I find the landlord has taken reasonable steps to end the tenant's obligation for the fixed term mitigate the loss down to the value of ½ month's rent and ending the tenancy on April 14, 2012.

Again, based on the landlord's undisputed testimony, I accept the tenant is responsible for the additional amounts in the landlord's claim with the exception of compensation for a bath towel loaned to the tenant. In this instance, I find the lending of a towel is not a component of the tenancy agreement and therefore outside of my jurisdiction.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. As I have found the tenancy ended on April 14, 2012 and the landlord submitted his Application for Dispute Resolution on April 13, 2012, I find the landlord has fulfilled his obligations under Section 38(1).

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,945.83** comprised of \$2,562.18 rent owed; \$100.00 moving fee; \$13.65 hydro; \$220.00 damages to the unit and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$1,300.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,645.83**.

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: May 09, 2012.

Residential Tenancy Branch