



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

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

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on May 4, 2012, a Canada post tracking number was provided as evidence of service, the tenant did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

Issue(s) to be Decided

Is the landlord entitled to monetary order for unpaid rent?

Is the landlord entitled to a monetary order for money owed for loss?

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

Background and Evidence

The parties entered into a fixed term tenancy agreement which began on January 1, 2012 and was to expire on July 31, 2012. Rent in the amount of \$1,495.00 was payable on the first of each month. A security deposit of \$747.50 was paid by the tenant. The tenancy ended on May 31, 2012. The tenant gave the landlord permission in writing to retain the cost of refilling the oil tank from the security deposit and after that deduction the tenant has a balance of \$299.64 remaining.

The landlord claims as follows:

a.	Liquidated damages	\$450.00
c.	Unpaid rent for July 2012	\$1,495.00
d.	Unpaid water bill	\$53.29

e.	Filing fee	\$50.00
	Total Claimed	\$3,543.29

Liquidated damages

The landlord's agent testified the tenant breached the fixed term tenancy agreement by vacating the rental unit prior to the expiry of the tenancy agreement. The landlord's agent stated the tenancy agreement provides a liquidate damages clause for the administrative cost of re-rent the unit. The landlord seeks to recover \$450.00 as provided by the agreement.

Unpaid rent for June 2012

The landlord's agent testified the tenant provided written notice on April 26, 2012, that he would be vacating the rental unit on May 31, 2012. The landlord's agent stated that on April 27, 2012, they immediately advertised the rental unit on three popular local websites. Filed in evidence are copies of those advertisements. The filed evidence shows the rent was posted at a rate higher than the rent in the tenancy agreement.

The landlord's agent testified they did not realize the rent was posted at a higher amount and that was an error they made.

Unpaid rent for July 2012

The landlord's agent testified that on May 26, 2012, they renewed the advertisements and the amount of rent posted in those advertisements was the same amount of rent listed in the tenancy agreement. The landlord testified they were able to rent the unit for August 15, 2012.

Unpaid water bill

The landlord's agent testified that the tenant did not pay his outstanding water bill and they paid the bill to ensure the outstanding bill would not be transferred to the landlord's property tax. Filed in evidence is a copy of the water bill.

Analysis

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;

- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the landlord has the burden of proof to prove a violation of the Act and a corresponding loss.

Section 45 of the 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

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

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

(c) 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.

[Emphasis added.]

Liquidated damages

In this case, the tenant breached the Act as the earliest the tenant could have legally end the tenancy was July 31, 2012, as stated in the tenancy agreement. Clause #5 of the tenancy agreement allows the landlord to recover liquidated damages for the administrative cost of re-rent the unit. Therefore, I find the landlord has suffered a loss is entitled to compensation in the amount of **\$450.00**.

Unpaid rent for June 2012

The evidence of the landlord's agent was the rental unit was advertised immediately upon the tenant providing notice on three local popular websites, however, the advertised amount is greater than rent listed the tenancy agreement. As a result, I find the landlord did not take reasonable steps to mitigate the loss. Therefore, I dismiss the landlord's request for compensation for unpaid rent for June 2012.

Unpaid rent for July 2012

The evidence of the landlord's agent was on May 26, 2012, they re-advertised the rental unit and in these advertisements the rent was posted in the same amount as in the tenancy agreement, however, they were unable to rent the unit until August 15, 2012. As a result, I find the landlord did take reasonable steps to mitigate the loss of July 2012, rent. Therefore, I grant the landlord compensation for unpaid rent for July 2012, in the amount of **\$1,495.00**.

Unpaid water bill

The evidence of the landlord's agent was the tenant did not pay the outstanding water bill and the landlord paid that bill to ensure it was not transferred to the landlord's property tax. The utility bill provided as evidence is for the rental unit and for a time period the tenant had possession of the unit. Therefore, I find the tenant is responsible for that cost and I grant the landlord compensation in the amount of **\$53.29**.

I find that the landlord has established a total monetary claim of **\$2,048.29** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$299.64** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,748.64**.

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 and may keep a portion of the security deposit in full satisfaction of the claim and the tenant is granted an order for the balance due of their security deposit.

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: August 15, 2012.

Residential Tenancy Branch