



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72; and
- other remedies which she identified in her application as an Order of Possession in case the tenant did not vacate the rental unit by August 31, 2012, and possible storage costs that she might incur if the tenant did not move out by that date.

The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable him to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord gave oral and written evidence that the tenant sent the landlord an email on July 26, 2012 advising the landlord that the tenant planned to end this fixed term tenancy by August 31, 2012. After that email, there were a number of interactions between the landlord and the tenant, many of which called into question whether the tenant would in fact vacate the rental unit by August 31, 2012. The landlord entered into written evidence a copy of a signed Mutual Agreement to End a Tenancy signed by both parties that was to take effect on August 31, 2012. The landlord noted that the tenant did not agree to sign this document until September 13, 2012, after he had vacated the rental unit on or about August 29, 2012.

The landlord testified that she handed the tenant a copy of her dispute resolution hearing package in the accompaniment of two police officers on August 16, 2012. I am satisfied that the landlord served this package to the tenant in accordance with the *Act*.

At the hearing, the landlord testified that she no longer required an Order of Possession as the tenant did vacate the rental unit and she has possession of that unit. As such, I

agreed to the landlord's request to withdraw the portion of her application pertaining to the Order of Possession that she was seeking.

The landlord also amended her application for unpaid rent for September 2012, as she was able to re-rent the premises to a new tenant who took occupancy by September 15, 2012. As she had received \$500.00 in rent from the new tenant for September 2012, the landlord lowered her requested monetary award by that amount.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commenced on April 3, 2012. Monthly rent was set at \$1,000.00, payable in advance on the last day of each month. The landlord continues to hold the tenant's \$425.00 security deposit paid on April 3, 2012. The landlord entered into written evidence a copy of the April 3, 2012 joint move-in condition inspection report she conducted with the tenant. She said that the tenant did not participate in a joint move-out condition inspection as he abandoned the rental unit without leaving her his keys.

The landlord's original application for a monetary award of \$2,000.00 was for her loss of rent for September 2012 and expenses she anticipated incurring arising out of this tenancy. As noted above, she lowered the amount of unpaid rent she was seeking for September 2012 from \$1,000.00 to \$500.00. However, she testified that the tenant had failed to abide by the terms of their agreement by refusing to reimburse her for a \$300.00 carpet expenditure she only agreed to incur if he remained in the rental unit for the duration of his fixed term tenancy. She testified that she discounted his May 2012 rent \$300.00 as part of this agreement. At the hearing, she also asked for reimbursement of \$123.00 she spent on locksmith services when the tenant vacated the rental unit without leaving his keys. She also said that she incurred costs when the tenant left without returning his Shaw cable box. She did not enter into written evidence receipts for any of these additional expenditures. She also said that she had additional damage claims that have become apparent once the tenancy ended.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the tenant was in breach of his fixed term tenancy agreement because he vacated the rental premises prior to the March 31, 2012 date specified in that agreement. As such, the landlord is entitled to compensation for losses she incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*. However, as the parties signed a Mutual Agreement to End a Tenancy, the tenant's exposure to the landlord's losses in rent are limited to September 2012. By the time the parties signed their Mutual Agreement to End a Tenancy, the tenant had vacated the rental unit by August 31, 2012. I find that this Mutual Agreement does not release the tenant from responsibility for the landlord's loss of rent for September 2012.

There is undisputed evidence that the tenants did not pay any rent for September 2012. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for September 2012. Her success in re-renting the premises as of September 2012 did mitigate the tenant's loss for that month (and future months of his fixed term) to a total of \$500.00. As such, I am satisfied that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the tenants' loss.

As I find that the tenant did not comply with the provisions of his fixed term tenancy agreement, I issue a monetary award in the landlord's favour in the amount of \$500.00 for the landlord's loss of rent for September 2012.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Although the landlord identified specific costs that she has incurred at the end of this tenancy, these costs were not known when she filed her application for dispute

resolution. The costs that she was concerned about at that time did not occur as the tenant did vacate the rental unit by August 31, 2012. As the expenses she claims to have incurred following the tenant's departure are not ones that were identified in the landlord's original application, I dismiss the landlord's claims for damage and losses that only became apparent by the end of this tenancy with liberty to reapply.

I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in this decision. As the landlord has been successful in this application, I allow the landlord to recover the filing fee from the tenant.

Conclusion

I issue a monetary award in the landlord's favour under the following terms which allows the landlord to recover her loss of rent for September 2012 and her filing fee for this application and to retain the tenant's security deposit:

Item	Amount
Landlord's Loss of Rent for September 2012	\$500.00
Less Security Deposit	-425.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$125.00

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an Order of Possession is withdrawn. I dismiss the landlord's application for a monetary award for damage and losses that only became apparent by the end of this tenancy with liberty to reapply.

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: September 19, 2012

Residential Tenancy Branch