



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that the Tenant was served the application for dispute resolution and hearing documents by registered mail on July 13, 2012. Canada Post receipts were provided in the Landlord's evidence along with copies of the envelopes which were returned to the Landlord unclaimed. The evidence supports the package was sent to the Tenant's forwarding address which she provided to the Landlord. Case law stipulates that refusal to accept or claim registered mail does not negate service. Therefore, based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding, in accordance with the *Act*, so I continued in the Tenant's absence.

Issue(s) to be Decided

1. Should the Landlord be granted a Monetary Order?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on September 1, 2011 and was set to switch to a month to month tenancy after August 31, 2012. Rent was payable on the first of each month in the amount of \$800.00 and on August 15, 2011 the Tenant paid \$400 as the security deposit.

The Landlord confirmed that no move in or move out condition inspection reports were completed and that he received the Tenant's forwarding address in writing on June 12, 2012 on the Tenant's notice to end tenancy. The Tenant hand delivered her notice to the Landlord on June 12, 2012 to end her tenancy effective July 5, 2012.

The Landlord relied on his documentary evidence which included, among other things, copies of: detailed list of his claim; Canada Post receipts; the tenancy agreement; the Tenant's notice to end tenancy; cheques issued by the Tenant; the envelope returned unclaimed by the Tenant; list of work performed by the Landlord; advertisement posted

on the internet to re-rent the unit; receipts for paint and supplies; debris disposal receipt; Landlord's calculation of hydro usage; and photos of hydro meter and the rental unit.

The Landlord has sought \$2,818.01 which is comprised of the following:

\$1,600.00 for unpaid rent which includes \$800.00 for July and \$800.00 for August 2012 rent. The Landlord submitted that the fixed term tenancy was not set to expire until August 31, 2012 so the Tenant should have to pay him for loss of rent. The Landlord pointed to his evidence which included a copy of an internet advertisement dated July 23, 2012 which indicates the unit is available August 1, 2012 for \$900.00 per month.

\$90.51 for hydro usage from April 1, 2012 to July 5, 2012 as supported by the Landlord's evidence which included photos of the meter readings and the Landlord's spreadsheet displaying the calculations. The Landlord noted that the Tenant had a previous accumulated unpaid balance owing of \$14.20 and that she paid \$50.29 on July 1, 2012 by cheque for hydro.

\$20.00 for the disposal fee of debris that was left behind by the Tenant and supported by the receipt provided in evidence dated July 25, 2012.

\$1,263.00 for the Landlord's labour and miscellaneous supplies to repair damage caused to the rental unit. The Landlord provided an itemized list of work he completed along with a few photos of the unit which he took on July 5, 2012 during the course of the Tenant's move.

In closing the Landlord reviewed the amounts claimed and stated that he wished to have the amounts offset against the Tenant's security deposit.

Analysis

When a landlord makes a claim for damage or loss the burden of proof lies with the landlord to establish their claim. To prove a loss the applicant must satisfy all of the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Upon consideration of the evidence before me, in the absence of any evidence from the Tenants who did not appear, despite being properly served with notice of this proceeding, I accept that the rental unit was left in a state that required some cleaning and minor repairs including touch up painting. Based on the foregoing I find the Landlord is entitled to monetary compensation as follows:

Unpaid rent: On June 12, 2012 the Landlord was provided written notice to end the tenancy effective July 5, 2012 and the Tenant paid the Landlord \$105.21 for rent from July 1 to 5th, 2012.

Ending a fixed term tenancy prior to the end of the fixed term is a breach of Section 45 of the Act. That being said, the evidence in this case proves the Landlord waited until July 23, 2012 (41 days after he received notice that the Tenant was moving out) before he began advertising the unit. Furthermore, the Landlord increased the rent he was seeking for the unit by \$100.00 per month. The Landlord ought to have advertised the unit as soon as he received the Tenant's notice, at a rate that was reasonable in the current rental market, to attempt to fill the unit as soon as possible so as not to lose rental income.

Based on the aforementioned I find the Landlord provided insufficient evidence that he took reasonable steps to mitigate his loss. Accordingly, I find the Landlord has not met the test for damages or loss as outlined above and the claim for \$1,600.00 for loss of rent is hereby dismissed, without leave to reapply.

The tenancy agreement requires the Tenant to pay costs for hydro and there is an accumulated balance due of \$90.51 for the period up to July 5, 2012. The Tenant paid \$50.29 towards this balance on July 1, 2012 therefore I award the Landlord the difference of **\$40.22**.

The evidence supports the Tenant breached section 37(2) of the *Act* by leaving debris in the rental unit after she vacated the property which caused the Landlord to suffer a loss of \$20.00 when having to dispose of this debris. Accordingly, I award the Landlord **\$20.00** in disposal fees.

The Landlord has claimed \$1,263.00 for repairs and cleaning of the rental unit. In support of this claim the Landlord submitted photos and receipts dated July 09th, July 20th and July 26, 2012, for paint and painting supplies totalling \$113.22. There were no condition inspection reports completed to support the condition of the rental unit at the onset and at the end of this tenancy.

After review of the aforementioned I find the Landlord's claim to be excessive given the rental unit depicted in the photos. There are claims for replacement curtain rods, curtains, and a shower head however there was no evidence provided to support these items. Therefore, in accordance with section 67 of the *Act*, I award the Landlord **\$313.22** which is comprised of \$200.00 for labour plus reimbursement of \$113.22 for the receipts for paint and supplies. The balance is dismissed, without leave to reapply.

The Landlord has only been partially successful with their application; therefore I award partial recovery of the filing fee in the amount of **\$25.00**.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Hydro fees to July 5, 2012	\$ 40.22
Disposal fees	20.00
Repairs, cleaning & painting	313.22
Filing Fee	<u>25.00</u>
SUBTOTAL	\$398.44
LESS: Security Deposit \$400.00 + Interest 0.00	<u>-400.00</u>
Offset amount due to the Landlord	<u>\$ 1.56</u>

As the offset amount due to the Landlord is less than five dollars, I decline to issue a monetary order.

Conclusion

The Landlord has been awarded a Monetary Claim of \$398.44 which I HEREBY ORDER to be offset against the Tenant's security deposit currently held in trust.

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 18, 2012.

Residential Tenancy Branch