



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF.

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, liquidated damages, cleaning, advertising and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her monetary claim. The tenant applied for the return of the security deposit and for a refund of five days of rent for a period during which she was denied access to the rental unit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Did the landlord suffer a loss of income? Is the landlord entitled to a monetary order for liquidated damages, loss of income and the filing fee? Did the tenant give the landlord adequate notice to end the tenancy? Is the tenant entitled to the return of her security deposit and a rent refund?

Background and Evidence

The tenancy started on December 08, 2011 for a fixed term ending July 08, 2012. The monthly rent is \$690.00 due on the eighth of each month. Prior to moving in the tenant paid a security deposit of \$345.00. The landlord filed a copy of the tenancy agreement. An uninitialled handwritten term in the tenancy agreement states:

"Liquidated damages \$345. Cost and Time to rent suite. If you move before agreement expires. This amt does not cover rental loss"

On May 08, the tenant gave the landlord written notice to end the tenancy and the landlord informed her of her financial obligations if she chose to end the tenancy prior to the end date of the fixed term.

The tenant stated that on June 03, she returned to the rental unit from work, to find her belongings outside the unit and the door locked. She was unable to access the unit. The tenant called for assistance from the police and was told that they could not resolve disputes between landlords and tenants. The tenant was unable to use the rental unit after June 03, despite having paid rent up to June 08.

The landlord stated that on June 03, she had entered the unit to do some cleaning and found a container of lighter fluid lying close to the furnace. In her written submission, the landlord states that she called the police and they advised her to secure the unit and not allow the tenant back in.

The tenant testified that she had just quit smoking but in the past she used to refill her lighters with this fluid and it was left over from then. She stated that this fluid is easily available in corner stores and that she had a 599 ml container in the unit. She stated that the furnace was not in operation on June 03, 2012 and even if it was on, the presence of this fluid did not pose any threat to safety.

The landlord is claiming the following:

1.	Liquidated Damages	\$345.00
3.	Cleaning	\$60.00
4.	Replace lamp shade	\$30.00
5.	Advertising	\$109.92
6.	Loss of income for June 08 to July08	\$1,380.00
	Total	\$2,004.92

The tenant has applied for the return of her security deposit (\$345.00) and for the refund of five days of rent when she was denied access to the unit.

Analysis

Landlord's application:

Based on the testimony of both parties, I find that the landlord locked the tenant out on June 03, 2012, based on the presence of lighter fluid in the rental unit. The landlord had the option of giving the tenant a warning letter, eviction notice and/or applying for an early end to tenancy, if she considered that the danger was imminent.

I accept the tenant's testimony that this fluid is freely available in stores and therefore I find that the presence of lighter fluid in the rental unit did not justify the landlord's actions of locking out the tenant.

Section 31 of the *Residential Tenancy Act* states that a landlord must not change locks or other means that give access to residential property unless the tenant agrees to the change and the landlord provides the tenant with a new key or other means that give access to the residential property.

Based on the documentary evidence and sworn testimony of both parties, I find that the landlord locked the tenant out and ended the tenancy in a manner that is not in compliance with the *Residential Tenancy Act* and therefore I find that the landlord is not entitled to her claims that are associated with an early end to tenancy including claims for liquidated damages, advertising and loss of income.

The landlord did not allow the tenant access to the unit and therefore did not give the tenant an opportunity to clean the unit. Accordingly, I find that the landlord is not entitled to her claim for cleaning.

The landlord has imposed a fine for smoking in the rental unit after the tenancy has ended. The tenant denied smoking inside the unit. In the absence of sufficient evidence to prove that the tenant smoked inside the unit, I dismiss the landlord's application for a monetary order for a smoking fine of \$80.00.

The landlord is claiming \$30.00 for a lampshade. The tenant agreed that she broke the lampshade but stated that these lampshades are available in a popular store for \$5.00. The landlord did not file a receipt for the lampshade and could not recall which store it was purchased at. Therefore, I will grant the landlord \$5.00 towards the replacement of the lampshade.

The landlord has not proven her claim and must therefore bear the cost of filing her application.

Tenant's application:

Based on the circumstances that ended the tenancy, I find that that the tenant was denied access to the unit on the days of June 03, 04, 05, 06, and 07. The tenant paid rent for these days and is therefore entitled to the return of rent for the days that she was denied access. The monthly rent was \$690.00 and the prorated rent for these five days is \$115.00.

The tenant is also entitled to the return of the security deposit in the amount of \$345.00.

Overall the landlord has established a claim of \$5.00 and the tenant has established a claim of \$460.00. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$455.00 which consists of the difference between the established claims of both parties.

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$455.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of \$455.00.

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 13, 2012.

Residential Tenancy Branch