



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for money owed or compensation for loss under the Act, for damages to the unit, and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Preliminary issue

At the onset of the hearing the landlord's agent stated that they are no longer seek to recover rent for September 2012, as they were able to rent the unit.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for loss?
Is the landlord entitled to a monetary order for damages to the unit?
Is the landlord entitled to retain the security deposit?

Background and Evidence

The parties entered into a twelve month fixed term tenancy agreement which began on October 1, 2011. Rent in the amount of \$1,800.00 was payable on the first of each month. A security deposit of \$900.00 was paid by the tenant. Filed in evidence is a copy of the tenancy agreement.

The parties participated in a move-in and move-out inspection. However, copies of the reports were not filed in evidence.

The landlord claims as follows:

a.	Loss of rent for August 2012	\$1,800.00
b.	Liquidated damage for breach agreement	\$900.00
c.	Clean up of Yard	\$593.60
d.	More cleaning up, garbage and washing down deck	\$201.60
e.	Filing fee	\$50.00
	Total Claimed	\$3,545.20

Loss of rent for August 2012

The landlord's agent testified on June 19, 2012, they received from the tenant written notice to end tenancy for July 31, 2012. The agent stated this was a breach of the fixed term agreement and seeks to recover rent for August 2012, in the amount of \$1,800.00.

The landlord's agent testified that they immediately advertised the rental unit on a popular local website and place advertisements in local papers. The agent stated the posted rent was increase and posted at \$2,000.00 per month.

Liquidated damage for breach agreement

The landlord's agent testified term 2(a) of the tenancy agreement provides that if the tenant breached the terms of the fixed tenancy agreement, then the tenant will be responsible to pay the fee of \$900.00 for the administrative cost of re-renting the unit.

The tenant testified he was unaware of that clause in the tenancy agreement.

Clean up of Yard

The landlord's agent testified that the tenant did not cut the grass or cleanup the shrubs and flower beds at the end of tenancy and seeks to recover the cost of \$593.60. Filed in evidence are photographs.

The tenant testified that the photographs submitted were taken in July 2012, prior to tenancy ending a do not properly reflect the condition of the grass at the end of tenancy.

The tenant stated the gardens were in the same condition as when tenancy commenced.

More cleaning up, garbage and washing down deck

The landlord's agent testified that he was required to wash down the patio deck, stairs, carport and back patio due to mildew. The agent stated that he also had to remove garbage, which including paint cans. The agent stated the paint was used for touchups in the rental unit that the landlord kept onsite, however, the tenant stored the paint underneath the deck and this destroyed the paint. The landlord seeks to compensation for cleaning and garbage disposal in the amount of \$201.60. Filed in evidence are photographs.

The tenant stated the photographs only show debris which has fallen of the trees and was not left in an unreasonable condition.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Loss of rent for August 2012

The Residential Tenancy 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
- (b) is **not earlier than the date specified in the tenancy agreement** as the end of the tenancy.

I find that the tenant has breached section 45 of the Act as the earliest date they could have legally ended the tenancy was September 30, 2012, as stated in the tenancy agreement. As a result of the tenant not complying with the terms of the tenancy agreement the landlord suffered a loss of rent for August 2012.

The Residential Tenancy Act states - Liability for not complying with this Act or a tenancy agreement

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do **whatever is reasonable to minimize the damage or loss.**

Emphasis Added

The evidence of the landlord was when the tenant provided him with written notice to end tenancy he immediately advertised the rental unit on a popular local website and place advertisements in local papers, however, the rental unit was not advertised at the current rent and was advertised at an increased rate of \$200.00. I find by increasing the rent the landlord failed to make reasonable efforts to minimize the loss as required by the Act. Therefore, I find the landlord is not entitled to recover loss rent for August 2012.

Liquidated damage for breach agreement

In this case, the tenant did breach section 45 of the Act, and the tenancy agreement does provide a liquidated damage term, which is for the administrative cost of re-renting the unit. I find the landlord is entitled to compensation in the amount of **\$900.00.**

Clean up of Yard

The evidence of the landlord was the tenant did not cut the grass during the tenancy as submits photographs of the grass. The evidence of the tenant was he did cut the grass and the photographs submitted are from when the landlord attended in July 2012 and do not properly reflect the grass at the end of tenancy. In this case, both parties have provided a version of events that are equally probable version of event. Without a copy of the move-out inspection, which is evidence of the condition of the premises at the end of tenancy, I find the landlord has failed to prove the condition of the grass at the end of tenancy.

The evidence of the landlord was the tenant did not weed or maintain the flower beds. The evidence of the tenant was the flower beds were in the same condition as when the tenancy commenced.

Under the Residential Tenancy Policy Guideline #1, Property Maintenance, the tenant who lives in a single-family dwelling is responsible for routine yard maintenance. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement required the tenant to maintain the flower beds.

In this case, clause 21 of the tenancy agreement states, "the tenant agrees to mow the grass and keep the weeds in control."

[Reproduced as written]

The tenancy agreement does not include a clause that requires the tenant to maintain the flower beds.

Based on the above, I find the landlord is not entitled to compensation for the cleanup of the yard.

More cleaning up, garbage and washing down deck

In this case, the evidence of the landlord was the patio and stairs needed cleaning as they were covered in mildew. The evidence of the tenant was a large tree was in the back yard dropping leaves. I find the photographs submitted by the landlord show scattered leave and other natural airborne debris scattered on the outside patio, it does not show the patio was covered in mildew. Further, without a copy of the move-out inspection, which is evidence of the condition of the premises at the end of tenancy, I find the landlord has failed to prove that additional cleaning was required.

The landlord was responsibly to properly store his paint, by removing the paint from the rental unit when the tenant took possession of the unit. I find the tenant is not responsible to dispose of the landlord's paint. Further, the other items in the photographs, such as a garden hose, could have easily been disposed of by placing in the garbage. I find the landlord has failed to prove that the tenant was responsible for the garbage cleanup.

Based on the above, I find the landlord is not entitled to compensation for additional cleanup and garbage disposal.

I find that the landlord has established a total monetary claim of **\$950.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit of **\$900.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$50.00**.

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 partial satisfaction of the claim. The landlord is granted a monetary order for the balance due.

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: October 25, 2012.

A. Wood, Dispute Resolution Officer
Residential Tenancy Branch