



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – OLC, FF, O

For the landlord – MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant has applied for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, other issues; and to recover the filing fee from the landlords for the cost of this application. The landlords have applied for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?
- What are the tenants other issues?
- Is the landlord entitled to keep the tenants security deposit?

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties' agree that this tenancy started on August 01, 2012. This was a fixed term tenancy which was due to expire on July 31, 2013. The tenant ended the tenancy on October 02, 2012. Rent for this unit was \$850.00 per month due on the 1st of each month. The tenant paid a security deposit of \$425.00 on August 01, 2012.

The tenant testifies that her son was assaulted by another tenant's son living in the building. The tenant notified the landlord who did try to get the other family to leave the building however the landlord was unsuccessful. The tenant testifies that she therefore gave the landlord written notice to end the tenancy on the grounds that it was an unsafe environment. The tenant has provided a copy of this letter which is unsigned and dated September 23, 2012 with an effective date of October 01, 2012.

The tenant states that the landlord has not been in non compliance with the *Act* but due to the assault the tenant felt that she should be able to end the tenancy before the end of the fixed term and not suffer any penalties as a result.

The landlord testifies that when the tenant told them that her son had been assaulted by this other boy living in the unit below, the landlord took this claim very seriously. The landlord testifies that he called his property manager and child protection services to report the children in the unit downstairs. The landlord also wrote two letters to the other tenant and served the other tenant with a One Month Notice to End Tenancy. The landlord filed an application against the other tenant seeking an Order of possession. A hearing took place and the landlord's application was dismissed as the altercation between the boys was considered to be minor.

The landlord testifies that he also asked his property manager to go to the police but the police did not do anything. The landlord testifies that the tenant did not report this alleged assault to the police.

The landlord testifies that he wrote to the tenant and recommended that she sign the notice letter. The landlord also recommended that the tenant should continue to live in the rental unit but if she still wanted to leave she should end the tenancy at the end of September, 2012 to help the landlord in re-renting the unit for October 01, 2012. The landlord testifies that he started to advertise the unit on internet sites and in the local newspaper. The landlord testifies that the unit was re-rented for November 01, 2012 for a six month lease at a lower rent of \$650.00. The landlord testifies that that tenant also moved out and the unit was re-rented again from December 01, 2012 for \$550.00 per month.

The landlord testifies that the tenant put a stop on her rent cheque for October and the landlord incurred bank charges of \$5.00. The landlord has provided a copy of the tenancy agreement addendum which informs the tenant that a landlord can charge \$25.00 for bank charges for NSF cheques.

The landlord seeks to recover lost rent for October of \$850.00 and seeks to amend his application to recover lost rental income for November of \$200.00 as the unit was re-rented for \$650.00. The landlord also seeks to recover the \$5.00 bank charge and the \$50.00 filing fee. The landlord seeks an Order to keep the security deposit of \$425.00 to offset against the loss of rental income.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for an Order for the landlord to comply with the *Act*, regulation or tenancy agreement; the tenant has agreed the landlord took steps against the other tenant by attempting to evict that tenant due to the assault on

the tenant's son. The tenant also agrees that the landlord has not been in non compliance with the *Act*. Therefore I find the tenants application has no merit for an Order for the landlord to comply with the *Act*.

I also find the tenant did not report this incident to the police and instead took it upon herself to end the tenancy before the end of the fixed term. Therefore the tenant is in breach of the *Act* and has not shown that this was an unsafe living environment which would warrant an early end to the tenancy. Therefore the tenant's request that she be allowed to end the tenancy without further penalty is denied.

I refer the tenant to s. 45(2) of the *Act* which states:

(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.

Consequently, as the tenant ended the tenancy on October 02, 2012 the tenant is in breach of s. 45(2) of the *Act*. The landlord is therefore entitled to recover any rent due up to the end of the fixed term or up to the date the unit was rented. The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able

to re-rent the premises for the balance of the un-expired term of the tenancy. The landlord did not pursue any further claim for subsequent months.

The landlord has claimed for October loss of rent and for the difference in rent of \$200.00 for November, 2012. Consequently, I find the landlord is entitled to recover the sum of **\$1,050.00** in loss of rent. I further find the landlord is entitled to recover the bank charges of **\$5.00** as the tenant put a stop on the rent cheque for October, 2012.

The landlord is entitled to keep the tenants security deposit of **\$425.00** pursuant to s. 38(4)(b) of the *Act*. The landlord is also entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*.

The landlord is entitled to a Monetary Order for the following sum pursuant to s. 67 and 72(1) of the *Act*:

Loss of rental income	\$1,050.00
Bank charges	\$5.00
Filing fee	\$50.00
Subtotal	\$1,105.00
Less security deposit	(-\$425.00)
Total amount due to the landlord	\$680.00

Conclusion

I HEREBY FIND in favor of the landlords' amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$680.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenant's application is dismissed in its entirety without leave 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: November 26, 2012.

Residential Tenancy Branch