



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction,

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for loss of income, for the cost of repairs and cleaning and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, the tenant informed me that he was out of the country and had received the landlord's evidence upon his return on December 17. The landlord stated that on December 13, he had hand delivered the evidence package to an adult at the address provided by the tenant. Based on the testimony of both parties, I find that the evidence was served in a timely manner and will be used in the making of this decision.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, for the cost of repairs and cleaning and for the filing fee?

Background and Evidence

The tenancy started on August 01, 2011 for a fixed term of one year. The rent was \$1,550.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$775.00. The end date on the tenancy agreement is August 01, 2012. The landlord pointed out that this was written in error and should read September 01, 2012. The tenant provided 12 post dated cheques for the entire term of the tenancy.

The tenant stated that one month into the tenancy; he decided he did not want to live in the condo. The tenant informed the landlord of his decision and assured the landlord that he would take care of rent for the term of the tenancy. The tenant sub let the unit to his employee. The landlord continued to use the post dated cheques supplied by the tenant for the monthly rent. The landlord stated that three of the cheques bounced and replacement rent was paid directly to the landlord by the tenant or the tenant's brother.

The landlord stated that in May 2012, he received a noise complaint from the strata and he informed the tenant. Shortly after, the landlord received a second noise complaint and he visited the condo.

He found out that up to five people were living in the condo and he also found that the condo was being poorly maintained. After a third complaint, the landlord requested the tenant to vacate the unit.

The tenant agreed to move out and did so on July 24, 2012. The landlord started advertising the availability of the unit on July 25 and had multiple showings. However due to the condition of the unit, the landlord had to carry out repairs, paint and clean the unit, before it was ready to be re rented. A prospective tenant, who viewed the unit on August 15, rented the unit effective September 01, 2012. The landlord is claiming loss of income for the month of August 2012.

The landlord stated that the building in which the condo was located was brand new and the tenant was the first occupant of the rental unit. At the end of the tenancy, the unit smelled of cigarette smoke and there were five burn marks on the carpet – the largest being the size of a toonie. The landlord also stated that there were stickers on the walls, a broken faucet and the unit was left in a dirty condition. The landlord filed photographs to support his testimony.

The landlord received citations for the noise complaints which resulted in fines of \$600.00. The landlord stated that the tenant paid \$500.00 towards the fines and owes \$100.00. The tenant did not return a fob and the landlord paid \$100.00 for a replacement

The landlord is claiming the following:

1.	Loss of income for August	\$1,550.00
3.	Cleaning	\$200.00
4.	Replace faucet	\$112.00
5.	Replace fob	\$100.00
6.	Balance of strata fine	\$100.00
7.	Replace carpet (estimate)	\$1,100.00
8.	Filing fee	\$50.00
	Total	\$3,782.00

Analysis

Section 45(2) of the *Residential Tenancy Act* states that 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 on which the tenancy is based that rent is payable under the tenancy agreement.

In this case, the tenant was in a fixed term tenancy ending September 01, 2012. The tenant moved out on July 24, 2012 leaving the unit in a dirty condition which required repairs. The landlord mitigated his losses by advertising the availability of the rental unit, but was unsuccessful in finding a tenant for August, thereby causing him to suffer a loss of income. Based on the testimony of both parties, I find that the landlord is entitled to his claim of \$1,550.00 for loss of income for August 2012.

Based on the photographs and receipts filed into evidence and the age of the condo, I find that the tenant is responsible for the cost of painting, cleaning and repair of the broken faucet. The tenant is also responsible for the replacement of the fob and the payment of the strata fines. The landlord has not yet incurred the cost of replacing the carpet and has provided estimates ranging from \$700.00 to \$1,100.00. I dismiss this portion of the landlord's claim with leave to reapply. Since the landlord has proven his claim, he is also entitled to the recovery to the filing fee of \$50.00.

Overall the landlord has established a claim for \$2,682.00. I order that the landlord retain the security deposit of \$775.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$1,907.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$1,907.00**.

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: December 19, 2012.

Residential Tenancy Branch