



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on October 16, 2012 in accordance with Section 89 to the forwarding address provided by the tenant. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for cleaning; for compensation for damage or loss; for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on June 6, 2012 for a 1 year and 15 day fixed term tenancy beginning on June 15, 2012 for a monthly rent of \$740.00 (including \$15.00 for parking) due on the 1st of each month with a security deposit of \$370.00 paid.

The tenancy agreement included a clause indicating that if the tenant ends the tenancy within 12 months of the start of the tenancy the tenant agrees to pay the landlord \$500.00 as liquidated damages. The landlord submits the \$500.00 is a genuine pre-estimate of the costs associated with re-renting the unit.

The landlord testified that the costs included in this pre-estimate include the costs of preparing the rental unit for a new tenancy; weekly dusting until rented; advertising costs in local papers; and administrative costs for showing the unit and negotiating a new tenancy. The landlord provided no documentary evidence to support this testimony.

The landlord seeks to collect liquidated damages from the tenant.

The landlord testified and provided evidence that the tenant did not give notice of her intent to end the tenancy and that they found out the tenant had vacated the rental unit after the tenant had failed to pay rent on October 1, 2012. The landlord arranged for an inspection of the rental unit on October 11, 2012 and found the tenant had abandoned the rental unit.

The landlord seeks compensation for rent for the month of October 2012 as the tenant did not pay rent for that month and for November 2012 as the tenant failed to give notice to end the tenancy in accordance with the *Act*. The landlord testified that despite advertising the unit and showing it they were unable to enter into a new tenancy agreement until November 15, 2012 for a new tenancy beginning on December 1, 2012.

The landlord also seeks compensation for unpaid rent for a part of June 2012 in the amount of \$24.00; late fees for \$25.00 for late payment of August 2012 rent; and \$45.00 in unpaid parking fees.

The landlord has submitted a copy of a Condition Inspection Report completed both at move in and at move out. The move in section is signed by the tenant and landlord's agent but there are no signatures of either party acknowledging the condition of the unit at the end of the tenancy.

The landlord seeks compensation for general cleaning and for carpet cleaning. The landlord submits that the Report indicates the total cost of the general cleaning based on \$12.00 per hour. For example, the report indicates the landlord charged the tenant \$24.00 for cleaning the fridge, representing 2 hours each for task identified.

The landlord submits that in addition to the fridge the landlord had to clean the stove/vent; drapes and windows in the living room; the bathtub and bathroom floor; and the carpets. Total cleaning costs incurred by the landlord were for a total of 10 hours or \$120.00 and carpet cleaning actual costs of \$95.20.

As the tenant failed to return keys at the end of the tenancy the landlord seeks to have the tenant compensate the landlord for lock replacement at \$210.20.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I accept the tenant failed to provide the landlord with any notice to end tenancy and I accept the landlord's undisputed testimony that the tenant abandoned the rental unit. I note the landlord is not able to determine specifically when the tenant abandoned the rental unit.

Section 7 of the *Act* requires a landlord who claims compensation for damage or loss that results from the tenant's non-compliance with the *Act*, the regulations or tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In the case before me I find the landlord took reasonable steps to attempt to re-rent the rental unit but was unable to re-rent the unit until December 1, 2012. As such, I find the landlord has established he is entitled to rent for both October and November 2012.

Based on the undisputed testimony of the landlord I find the tenant is also responsible for the payment of \$24.00 for rent for June 2012; \$45.00 for parking; and \$25.00 for late fees for August 2012.

I accept, based on the testimony of the landlord that the liquidated damages clause in the tenancy represents a valid fee for damages suffered by the landlord as a result of the ending of the tenancy prior to the 12 month fixed term. I find the tenant failed to fulfil the fixed term and the landlord is entitled to liquidated damages as claimed.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Based again, on the landlord's undisputed testimony I find the landlord is entitled to compensation for cleaning (\$120.00); carpet cleaning (\$95.20); lock replacement (\$210.20).

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,519.40** comprised of \$1,544.00 rent and fees owed; \$500.00 liquidated damages; \$95.20 carpet cleaning; \$120.00 general cleaning; \$210.20 lock replacement and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$370.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,149.40**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: January 07, 2013.

