



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Jabs Construction Ltd
And [Tenant's name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (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 landlord entitled to a Monetary Order for unpaid rent?
- 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 month to month tenancy started on June 01, 2011. Rent for this unit was \$725.00 per month increasing to \$755.00 per month on July 01, 2012. Rent was due on the 1st day of each month. The tenant paid a security deposit of \$362.50 which has been returned to the tenant in full.

The landlord testifies that the tenant gave late notice to end the tenancy. This notice was received by the landlord's agent on October 01, 2012 and had an effective date of October 31, 2012. The landlord testifies that the tenant did not finish cleaning the unit until November 01, 2012 when the tenant's mother and a friend were at the unit while the landlord's agent was showing the unit to a prospective tenant. The tenant returned the keys on November 05, 2012 at the move out inspection.

The landlord testifies that the tenant acknowledged on the move out inspection report her responsibility to pay November's rent if the unit could not be re-rented for November, 2012. The tenant did not pay the rent for November and still had possession of the unit until November 05, 2012.

The landlord testifies that as soon as they received the tenants written Notice to end the tenancy the landlord started to advertise the rental unit. The landlord has provided copies of the advertisements in evidence. The landlord testifies that they had some potential tenants view the unit but it was not re-rented until December 01, 2012. The landlord therefore seeks to recover unpaid rent for November of \$755.00. The landlord also seeks to recover a late fee of \$25.00 for November's rent as documented in clause 10 of the tenancy agreement.

The landlord testifies that the tenant also acknowledged on the move out inspection report that she is responsible for the cleaning of the blinds in the unit and agrees the landlord may deduct the sum of \$51.00 from the security deposit. The landlord testifies however that the tenant later requested the return of the security deposit which the

landlords returned without making the agreed upon deductions. The landlord has provided a copy of the invoice for the cleaning of the blinds in evidence and seeks to only recover the agreed upon amount of \$51.00.

The tenant disputes the landlords claim. The tenant testifies that she had fully moved out of the rental unit on October 31, 2012 and the unit was left clean on that date. The tenant testifies that she attempted to arrange a move out inspection with the landlords agent for that day and to return the keys however the landlords agent kept putting the tenant off telling the tenant there was no hurry as the tenant would have to pay Novembers rent anyways. The tenant testifies her mother and friend were not at the unit cleaning on November 01, 2012 but were there on October 31, 2012 and the landlord's agent must be mistaken with the dates.

The tenant disputes that she is obligated to pay rent for November as the landlord had failed to give the tenant a copy of the tenancy agreement until the day after the tenant had given Notice to end the tenancy. The tenant agrees that she did sign the tenancy agreement at the start of the tenancy. The tenant testifies that she repeatedly asked the landlords agent for the tenancy agreement but one was never provided.

The landlord's agent testifies that the tenant was given a copy of the tenancy agreement at the start of the tenancy with a copy of the move in inspection report. The landlord's agent testifies that another copy of the tenancy agreement was put on the tenant's door after the tenant had given notice to inform the tenant again of the clause in the tenancy agreement concerning the Notice period. The landlord testifies that they have no record of the tenant ever asking the landlord for another copy of the agreement.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 45(1) of the *Act* which states:

45 (1) *A tenant may end a periodic 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, and

(b) 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 both parties agree that the tenants notice was given on October 01, 2012 and not September 30, 2012 then the tenants notice is considered to be a late Notice to end the tenancy.

A landlord is required to mitigate any loss when a late Notice has been given by making attempts to re-rent the unit as quickly as possible. I find from the evidence presented that the landlord did advertise the unit as soon as the tenants notice was received and therefore I find that although the unit did not rent until December 01, 2012 the landlord did attempt to mitigate the loss as required under s. 7(2) of the *Act*.

The landlord argues that as the tenant remained in possession of the rental unit until November 05, 2012 then Novembers rent must be considered a loss of rent, however the tenant argues that she was fully moved out by October 31, 2012 and only returned to the unit to do the move out inspection and return the keys on November 05, 2012 as the landlords agent was not available on October 31, 2012 to do the final inspection. I have considered both arguments in this matter and find the tenant's evidence more compelling regarding the actual day the unit was empty of possessions and cleaned. The tenant's photographic evidence shows that this date was October 31, 2012 and the tenants telephone records show the tenant called the landlords agent on October 31, 2012 at 4.01 p.m. Therefore it is my decision that the tenant did provide vacant possession of the rental unit on October 31, 2012 and the inspection was not arranged by the landlord until November 05, 2012 at which time the tenant returned the keys.

Consequently I find the landlord is entitled to recover a loss of rental income for November to the sum of **\$755.00**. However the landlord is not entitled to recover a late payment fee of \$25.00 as in accordance to the tenancy agreement this fee is only applied to late rent payments.

I further find that the tenant did agree the landlord could deduct the sum of **\$51.00** for cleaning the blinds and therefore I also award this sum to the landlord.

As the landlord has been largely successful with this claim I find the landlord is also entitled to recover the **\$50.00** filing fee from the tenant.

Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$856.00** pursuant to s. 67 and 72(1) of the *Act*.

The order must be served on the respondent and is enforceable through the Provincial Court 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: February 15, 2013