



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for compensation under the Act and the tenancy agreement, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The Tenant was assisted by a translator at the hearing, due to a limited facility with English. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

On July 29, 2012, the parties signed a written tenancy agreement. The tenancy began on August 1, 2012, and had an initial fixed term of 12 months, following which the tenancy would continue on a month-to-month basis. The rent was \$1,247.00 per month, and the Tenant paid a security deposit of \$623.50 in July of 2012. I note the parties had a prior tenancy agreement which ended and this new agreement was entered into.

The tenancy agreement required the Tenant to pay 50% of the utilities.

Another term of the tenancy agreement required the Tenant to give the Landlord a two month Notice to End Tenancy if the Tenant moved out during the fixed term portion of

the tenancy. I note that this term is not enforceable as it is contrary to section 5 and 45 of the Act, as explained below in this Decision.

On November 5, 2012, the Tenant wrote a letter to the Landlord stating they will be moving out of the rental unit by the, "... end of Dec. 2012." The Tenant writes that there are several problems with the rental unit and states in the letter that the Tenant would not have entered into the new tenancy agreement if he knew the Landlord was not going to make the repairs that were promised when the new agreement was being negotiated. The Tenant wrote that the shower stall leaked, there was a missing vent cover for a heat duct, the electrical wire to the kitchen hood fan was not connected, and the stove was not functioning.

The Tenant's position was that the Landlord forced him to move out because she promised to make these repairs to the rental unit in July of 2012, and that is why the Tenant agreed to a new tenancy agreement. The Tenant further submitted that the new tenancy agreement was at a higher rate of rent than the previous amount. The Tenant testified he called the Landlord in October of 2012 to enquire about the promised repairs.

In evidence the Tenant provided several emails exchanged between the parties in late October and early November of 2012. These indicate that the parties were trying to set up times for the repair people to attend the rental unit to address the concerns of the Tenant.

The Landlord testified that on November 9 and 12, 2012, a repair person attended the rental unit and made the repairs complained of by the Tenant on November 5, 2012. It appears the Landlord did try to have repairs done earlier, but had problems contacting the Tenant.

The Landlord testified that she agreed to make some of the repairs in July because the Tenant was agreeing to a 12 month tenancy. The Landlord testified that she was not aware of all the repairs the Tenant was complaining of in early November. For example, the Landlord testified she did not know the stove was not working until the Tenant told her in the November letter. Once she knew about all the repairs, the Landlord had these addressed, according to her testimony.

The Tenant replied that the repairs were not done properly. For example, the Tenant alleges that the shower was still leaking. The Tenant also testified that he did not stay in the rental unit after the repairs were made because he had already found a new place to live.

The Tenant vacated the rental unit on December 28, 2012. The Landlord had a new renter move in on March 16, 2013.

The Landlord is claiming the Tenant breached the Act and tenancy agreement by ending a fixed term tenancy improperly. The Landlord is claiming for lost rent for January, February and half of March 2013, in the amount of **\$3,117.50**.

In evidence the Landlord provided a list of approximately 14 potential renters who called about the rental unit or who were shown the rental unit by the Landlord. The dates on this list go from January 13, into early March of 2013.

The Landlord is also claiming for utilities that the Tenant did not pay. The Landlord is claiming **\$174.52** in unpaid utilities, comprised of gas and hydro. In evidence the Landlord has submitted copies of the bills from these utility companies, and a copy of her calculations at the amount owed by the Tenant.

The Landlord is also claiming for **\$131.04** for the cost of advertising the rental unit in Chinese newspapers, and has provided a receipt showing the ads began running in early December of 2012 and went through to January of 2013.

The Tenant made no submissions on the issues of advertising or utilities.

Analysis

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

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

I find the Landlord has shown that the Tenant has breached section 45 of the Act by breaching a fixed term tenancy without proper authority to do so.

Under section 45(2) of the Act, the Tenant was not allowed to end a fixed term tenancy without an order from an Arbitrator to end the tenancy, or without other authority under the Act to end it.

The Tenant's situation is *similar* to a notice under section 45(3) of the Act, which requires the Tenant to give the Landlord a written notice of an alleged breach of a material term of the tenancy, and a reasonable amount of time to address the alleged breach of the material term of the tenancy. If the Landlord had not corrected the alleged material breach within the reasonable amount of time, then the Tenant may have given the Landlord notice they were ending the tenancy.

Nevertheless, I do not find the Tenant met the requirements of section 45(3) of the Act as the Tenant did not give the Landlord a reasonable amount of time to make the repairs, in the written notice. Although the parties may have discussed certain repairs in the period prior to signing the new tenancy agreement, I do not find that these were material terms written into the new tenancy agreement. Furthermore, I accept the testimony of the Landlord that the Tenant had not disclosed all the repairs that the Tenant felt were required. I further find the Tenant had insufficient evidence to show that he warned the Landlord that failure to make the repairs would cause the Tenant to end the tenancy.

In any event, even if the Tenant had given the Landlord the warning type of notice contemplated by section 45(3), I find the Landlord began to make the repairs in a reasonable amount of time following the written notice of the Tenant that he was ending the tenancy.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord has established that the Tenant breached the Act and tenancy agreement, by not ending a fixed term tenancy in accordance with the Act, and by failing to pay utilities. I also find the Landlord mitigated her losses by advertising the rental unit quickly, and by actively showing the rental unit to prospective renters.

Therefore, I find the Landlord has established total monetary losses amounting to **\$3,473.06**, comprised of \$3,117.50 in lost rent for 2 ½ months, advertising of \$131.04, utilities of **\$174.52** and the \$50.00 fee paid for this application. I award the Landlord this amount in compensation for losses caused by the Tenant's breaches.

I order that the Landlord may retain the security deposit of **\$623.50** in partial satisfaction of the claim and I grant and issue the Landlord a monetary order under section 67 for the balance due of **\$2,849.56**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant ended a fixed term agreement without authority to do so under the Act or tenancy agreement. The Landlord is entitled to loss of rent, advertising costs to re-rent , unpaid utilities, and the filing fee for the Application. The Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due from the Tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 17, 2013

Residential Tenancy Branch

