



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF, SS

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 the landlord and tenant.

The landlord had originally applied to be granted an order allowing him to serve the tenant with documents and evidence in a different way than required by the *Residential Tenancy Act (Act)*, however the tenant attended the hearing and the issue was not required. As such, I amend the landlord's Application to exclude the issue of service

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for loss or damage; for unpaid utilities; and for carpet cleaning; 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 *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on March 29, 2011 for a month to month tenancy beginning on May 1, 2011 for the monthly rent of \$1,050.00 due on the 1st of each month with a security deposit of \$525.00 and a pet damage deposit of \$525.00 paid.

The parties agree that on or about January 10, 2013 the tenant gave the landlord verbal notice of his intent to end the tenancy by January 31, 2013. The tenant followed up with an email on January 23, 2013 confirming the same.

The landlord seeks rent for the month of February 2013 for the tenant's failure to provide a full month's notice to end the tenancy. The landlord also seeks hydro charges for the months of November 2012 to February 2013 (and for water/sewer charges for the period September 2012 to February 2013. The landlord seeks carpet cleaning costs.

The tenant accepts that he owes the landlord for carpet cleaning (\$78.50) and utilities for the months claimed with the exception of February 2013. The tenant does not accept that he owes the landlord rent because he did not attempt to rent the unit in a timely manner.

The landlord testified that he showed the rental unit once but that he could not show it until he made it suitable for viewing. The landlord submits that there had been a temporary wall in the living room that would not be attractive to potential tenants and the tenant was packing up so it was not suitable to show.

The landlord testified that he started advertising the rental unit after the tenant left in early February on a local "Used" site and on Craigslist. The landlord submits that he was able to re-rent the unit effective April 1, 2013.

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, in writing, 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.

From the evidence of both parties I find that the earliest the tenant could have ended the tenancy based on the date that he gave notice to the landlord was February 28, 2013 and as such, the tenant is responsible for the payment of rent for February 2013 subject only to the landlord's requirement to mitigate his losses.

Section 7(1) of the *Act* stipulates that if a landlord or tenant does not comply with the *Act*, regulations or tenancy agreement the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 7(2) states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, regulation or tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As the landlord was informed by the tenant on January 10, 2013 that he planned to vacate the rental property and even though the tenant did not provide written notice of his intent to vacate the rental unit until January 23, 2013, I find that it would have been

reasonable and in compliance with Section 7(2) to start advertising the availability of the rental unit as soon as he was aware the tenant intended to move out of the rental unit.

I find it is unreasonable for a landlord to wait until a rental unit is empty before he advertises its availability for rental. It is a standard practice for landlords to begin to show rental units once a notice to end the tenancy is received.

I find by failing to advertise at all until after the tenant vacated the rental property that in essence the landlord took absolutely no steps to mitigate the loss of rent for the month of February and I therefore dismiss his claim for lost rent and utilities for February 2013.

As the tenant does not dispute the landlord is owed monies for carpet cleaning and utility charges up to and including January, I grant the landlord is entitled to carpet cleaning and utilities. However, the landlord's request for utilities included his incorrect calculation of a total of \$730.18 based on the following amounts:

Description	Amount
Nov – Dec 2012 hydro	\$209.58
January – February 2013 hydro	\$211.67
Sept – Dec 2012 water/sewer	\$147.03
Jan – Feb 2013 water/sewer	\$73.50

My calculation based on these amounts makes a total claim of \$641.78. In addition, as I have found the landlord failed to take any action to re-rent the unit prior to February 2013 I find that he failed to mitigate his losses for utility charges as well and is therefore not entitled to compensation from the tenant for these utility charges.

Based on the evidence submitted I reduce the landlords total utility entitlement of \$641.78 by $\frac{1}{2}$ of each of the charges for hydro and water/sewer for the period of January to February 2013 or \$105.84 and \$36.75 respectively. As such, I find the landlord is entitled to a total award of \$499.19 for utilities.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$602.69** comprised of \$499.19 utilities owed; \$78.50 carpet cleaning and \$25.00 of the \$50.00 fee paid by the landlord for this application as he was only partially successful in his claim.

I order the landlord may deduct this amount from the security and pet damage deposits held in the amount of \$1,050.00 in satisfaction of this claim. I grant a monetary order to the tenant in the amount of **\$447.31** for the balance of the deposits held by the landlord.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant 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: May 02, 2013

Residential Tenancy Branch

