



Dispute Resolution Services

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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 the landlord only.

The landlord submitted documentary evidence to confirm 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 March 15, 2013 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

The landlord has provided evidence that the tenant did not claim the registered mail. However, the landlord testified that he also provided the same documents by personally delivering them to the tenant's mailbox.

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 lost revenue due ending the tenancy prior to the end of the fixed term; for damage to the rental unit; 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 April 6, 2012 for a 1 year and 1 day fixed term tenancy beginning on May 1, 2012 for a monthly rent of \$1,650.00 plus \$150.00 utilities due on the 1st of each month with a security deposit of \$825.00 paid. The landlord submits the tenancy ended at the end of January 2013 when the tenant vacated the unit.

The landlord submits the tenant first advised him in November 2012 that she would be moving out but that she later then decided to stay and eventually informed the landlord in January 2013 that she would be vacating.

The landlord submits that he started to advertise and show the rental unit as soon as possible in January 2013 but that after a few showings he decided that due to the condition of the rental unit he would not be able to rent it if the showings occurred while the tenant was still in the rental unit due to the condition of the unit. The landlord submits there was dog urine and feces throughout the rental unit.

The landlord testified that he was able to re-rent the unit effective March 1, 2013 at a total rent of \$1,650.00 utilities included and as such a loss of \$150.00 per month from the agreement he had with this tenant.

The landlord provided copies of correspondence to the tenant in September 2012 indicating the tenant had been failing to meet her obligations of keeping the rental unit clean and undamaged.

The landlord has submitted an invoice for work completed that included cleaning; hauling of garbage and fees; repairs for fly damage; dog urine in the air ducts; candle wax damage; painting preparation and painting in the amount of \$3,371.20.

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 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 on the undisputed testimony of the landlord I find the tenant failed to comply with Section 37 and is responsible for the costs incurred by the landlord for cleaning and repairs.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date

specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

As the tenant vacated the rental unit prior the end of the fixed term I find the tenant is responsible for the payment of rent for the months of February, March, and April 2013 in accordance with the fixed term, subject only to the landlord's obligation to mitigate his losses.

I am satisfied the landlord took reasonable steps to re-rent the unit but that due to the condition of the rental unit he had to concentrate on repairing the unit prior to showing it to potential tenants. Despite these efforts I find that he was unable to re-rent the unit until March 1, 2013. As such, I find the tenant is responsible for the payment of rent for February 2013.

In addition, as per the landlord's testimony that as a result of the tenant ending the tenancy early the landlord was forced to enter into a tenancy agreement with the new tenants at a rate less than what he was receiving from this tenant and as such, I find the tenant is responsible for the difference in this amount for the two months remaining in the fixed term for a total of \$300.00 owed to the landlord.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$5,521.20** comprised of \$2,100.00 rent owed; \$3,371.20 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 \$825.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$4,696.20**.

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: June 04, 2013

Residential Tenancy Branch

