



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, MNDC, MNR

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for loss of income for the balance of the fixed term, cost to show the unit to prospective tenants, miscellaneous expenses and to retain the security deposit in partial satisfaction of her claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order? Is the landlord entitled to retain the security deposit?

Background and Evidence

The parties agreed to the following sequence of events. The tenancy started in August 2009 for a fixed term of one year and was renewed on each anniversary. The last renewal of the tenancy agreement was done on August 12, 2012 for a fixed term of one year ending August 11, 2013. Rent was \$1,285.00 due on the first day of each month. Prior to moving in the tenants paid a security deposit of \$642.50.

On May 06, 2013, the tenants gave the landlord notice to end the tenancy with an effective date of June 30, 2013. The tenants physically moved out on May 31, 2013 and returned to the house periodically through the month of June to conduct showings. Rent for June was paid.

The landlord advertised the availability of the rental unit immediately upon receipt of the notice to end tenancy and had approximately 25 to 30 showings before a tenant was found for the end of August 2013. The landlord stated that the house has an unusual configuration and is therefore very difficult to rent. The landlord is claiming loss of income for the period of July 01 to August 11, 2013, in the amount of \$1,749.00, which is rent for the balance of the fixed term.

The parties discussed the issue of utilities. The landlord has made a claim of \$1,231.41 for utilities owed. The tenants agreed that they owe \$329.63 of this amount. The parties agreed that the balance of the landlord's claim was from bills dating back to the start of tenancy. The tenant stated that the landlord had forgiven this amount and the landlord denied this.

The landlord also made a claim for an additional amount for the cost of utilities for the period starting May 01 to August 02, 2013. The parties agreed to split the cost which would be \$50.00 a piece.

The landlord stated that she hired a person to conduct showings and run errands for her and she is claiming \$620.00 for the cost of his services. The landlord has filed receipts for this expense. The landlord is also claiming NSF charges in the amount of \$21.00 for a rent cheque that was returned to her in July 2012 and \$13.42 to fix a broken light. On September 06, 2013 the landlord had the carpets cleaned. The tenants stated that they had cleaned the carpets just prior to the move out inspection on June 30, 2013.

The landlord is making the following claim:

1.	Loss of income	\$1,749.00
2.	Utilities	\$1,231.41
3.	Showing unit and errands	\$620.00
4.	NSF charges from July 2012	\$21.00
5.	Fix light	\$13.42
6.	Clean carpets	\$87.76
	Total	\$3,722.59

Analysis

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a fixed term 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, 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.

By ending the tenancy prior to the end date of the fixed term, the tenants breached the agreement and therefore the landlord is entitled to damages in an amount sufficient to put the landlord in the same position as if the tenants had not breached the agreement.

As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenants could legally have ended the tenancy. In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by making attempts to re-rent the unit.

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

Based on the testimony of both parties, I find that the tenants gave notice on May 06, 2013. The landlord started advertising immediately and continued to advertise regularly and show the unit at least 25 times. Therefore I find that the landlord made sufficient attempts to re rent the unit. I further find that the tenants cooperated fully and visited the unit after having moved out, for the purpose of showing it to prospective tenants when required.

The landlord also informed me that the unit is very difficult to rent due to the configuration of the house. The house is large but contains only one bedroom and therefore is not suitable for families. The tenants paid rent for one full month after they moved out and despite the numerous showings over almost four months; the landlord was unable to find a new tenant until the end of August. Based on the reasons mentioned above and on the testimony of the landlord, I find on a balance of probabilities, that it is more likely than not that there are other factors that prevented the re renting of this rental unit. Therefore even though the tenancy was a fixed term tenancy, I find that the tenants are not responsible for the rent beyond June 2013. Accordingly the landlord's claim for loss of income is dismissed.

The landlord has made a claim for utilities in the total amount of \$ 1,231.41. A portion of this amount dates back to the start of tenancy. The parties offered contradictory testimony regarding this portion of the claim. The tenants stated that the landlord forgave this portion and the landlord denied this. Based on a balance of probabilities, I find that if the tenants owed this amount, the landlord had the option of serving the tenants with a notice to end tenancy for nonpayment of utilities during the tenancy instead of waiting for the tenancy to end to make a claim.

Based on the discussion during the hearing, I find that the landlord is entitled to \$329.63 plus \$50.00 for a total of \$379.63 for utilities. The balance of the landlord's claim for utilities owed is dismissed.

I dismiss the landlord's claim for the cost of a returned cheque in July 2012. The landlord could have made the claim during the tenancy.

The landlord has claimed \$13.42 to repair a light fixture. The landlord was not able to provide information on the age of the fixture. Since the landlord purchased the home in 2006, this fixture is at least seven years old and maintaining it is the responsibility of the landlord. Therefore the landlord's claim for \$13.42 is dismissed.

The tenants moved out on May 31, 2013 and stated that they cleaned the carpet just prior to the move out inspection on June 30, 2013. The landlord filed a copy of the move out inspection report. The report does not indicate that the carpet needed cleaning. The landlord had the carpet cleaned on September 06, 2013 which is two months after the tenancy ended. Therefore, the landlord must bear the cost of cleaning the carpet and her claim for \$87.76 is dismissed.

The landlord has also claimed \$620.00 for the cost of showing the rental unit and for other miscellaneous errands, paid to a person hired by her to take care of matters related to the rental unit. I dismiss this claim as the landlord chooses to run her business from a remote location and accordingly it is the cost of doing business that she must bear.

Overall the landlord has established a claim of \$379.63 for utilities. The remainder of the landlord's claim is dismissed. I order that the landlord retain this amount from the security deposit of \$642.50 in full satisfaction of the claim and return the balance of \$262.87 to the tenants within 15 days of receipt of this decision

Conclusion

The landlord must return \$262.87 to the tenant within 15 days of receipt of this decision

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: October 11, 2013

Residential Tenancy Branch