



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNDC, MNR, FF*

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 clean the unit and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, cleaning and the filing fee?

Background and Evidence

The parties agreed to the following facts. The rental unit was a trailer. The tenancy started on November 01, 2012 for fixed term of one year ending November 01, 2013. Rent was \$850.00 due in advance on the last day of each month. The tenant moved out on June 26, 2013 after giving the landlord at least one month notice. Rent was paid for the entire term that the tenant occupied the rental unit.

The landlord testified that he found a tenant for July 01, 2013 and he entered into a tenancy agreement with the new tenant. Later during the hearing the landlord stated that the tenancy agreement was not signed by the new tenant. The landlord testified that the new tenant was all set to move in, but changed his mind when he saw the condition of the unit. The landlord further testified that the rental unit remained vacant for a month and a half, after the tenant moved out. Despite his testimony, the landlord is claiming rent for five months after the tenant moved out.

The tenant agreed that her pet had caused damage to the blinds. The tenant agreed to pay the landlord his claim of \$100.00 to replace the blinds.

The landlord stated that the tenant left the unit in a dirty condition and filed photographs to support his testimony. He stated that the stove top, refrigerator and floor were not cleaned. The tenant stated that the unit was cleaned professionally and she filed a receipt in the amount of \$220.00, paid to the cleaning person.

The tenant's cleaner was called to join the conference call. She confirmed the dates that she cleaned the unit and the amount that she was paid for 11 hours of cleaning. The witness stated that the photographs do not represent the condition of the unit as she left it, after cleaning. While reviewing the photographs, the witness pointed out to a photograph that shows the floor strewn with rubbish in the same room that had the damaged blinds. On comparison of two photographs of the same room, it was apparent that the blinds in the photograph with the dirty floor are not damaged at all.

The landlord asked if the witness had cleaned the blades of the fan and she replied that she had not. The landlord stated that he spent several hours over the long weekend cleaning the rental unit and is claiming \$300.00 for his time.

The landlord also stated that the tenant broke a portion of kitchen countertop and is claiming \$200.00 to repair it. The landlord did not file any photographs or receipts to support this claim. The tenant denied having caused any damage to the countertop.

The landlord is making the following claim:

1.	Loss of income	\$4,250.00
2.	Replace blinds	\$100.00
3.	Cleaning	\$300.00
4.	Repair counter top	\$200.00
5.	Photographs	\$9.18
6.	Filing fee	\$100.00
	Total	\$4,959.18

Analysis

1. Loss of income - \$4,250.00

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 tenant 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 tenant 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 tenant could legally have ended the tenancy.

In this case, the landlord found a tenant immediately and entered into a tenancy agreement. The new tenant changed his mind and did not move in. Section 16 of the *Act* states that the rights and obligations of a landlord and tenant take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. Therefore, the landlord is at liberty to pursue his monetary claim for loss of income from the person who did not follow through with the new tenancy agreement. Accordingly, I find that this tenant is not responsible for the loss of income that the landlord may have suffered.

2. Replace blinds - \$100.00

The tenant agreed to pay \$100.00 to replace the blinds and therefore I award the landlord this amount.

3. Cleaning - \$300.00

Based on the testimony of the witness, I found that the photograph showing the dirty floor was taken when the blinds were not damaged. Therefore this photograph did not represent the condition of the floor at the end of the tenancy at which time the blinds were damaged as featured in another photograph.

Based on the receipt filed by the tenant and the testimony of the witness, I find that the tenant's evidence was credible and that she hired a professional to clean the rental unit. The landlord did not have a move out inspection report to prove the condition of the unit at the end of the tenancy and filed undated photographs.

For all the above reasons, I dismiss the landlord's claim for the cost of cleaning in the amount of \$300.00.

4. Repair counter top - \$200.00

The landlord did not file a photograph of this alleged damage to the counter top, nor did he file a receipt for any work done to repair the damage. The tenant denied having damaged the counter top and therefore in the absence of adequate evidence to support this claim, I dismiss it.

5. Photographs - \$9.18

The legislation does not permit me to award any litigation related costs other than the filing fee.

6. Filing fee - \$50.00

The landlord has proven a small portion of his claim and therefore must bear the cost of filing his application.

Overall the landlord has established a claim of \$100.00 to replace the blinds. I grant the landlord a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of \$100.00.

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 22, 2013

Residential Tenancy Branch

