



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, O, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for: unpaid rent or utilities, for money owed or compensation for damage or loss under the Residential Tenancy Act (referred to as the 'Act'), regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application. The landlord also applied for 'Other' issues which were identified during the hearing as the landlord's claim for damage to the rental suite and a request to keep the tenant's security deposit.

The landlord served the tenant with a copy of the application, the Notice of Hearing documents and the evidence used in this hearing by registered mail. The Canada Post tracking receipt was provided as documentary evidence. The tenant returned the unopened package that pertained to the hearing documents, as it contained the same Canada Post tracking number provided by the landlord, to the Residential Tenancy Branch with a letter attached to it. The letter states that the tenant is returning the package as she can see it is from the landlord because it contains his return address. The letter goes on to state that the tenant is leaving the province to escape the abuse and harassment of the landlord and that the landlord is 'dangerous and barely sane'. The tenant goes on to say in the letter that this is now the Residential Tenancy Branch's problem.

Section 90 of the *Act* states that a document served by registered mail is deemed to have been received 5 days later. Based on this, and the tenant's written letter back to the Residential Tenancy Branch showing that she had received the landlord's hearing documents even though they were unopened, I find the tenant was served the hearing

documents by the landlord in a manner required by the *Act*. In addition, Section 74 (4) of the *Act* states that a party to dispute resolution proceeding may be represented by an agent or a lawyer. As a result, if the tenant had issues attending the hearing, the tenant could have assigned an agent to appear on her behalf. Furthermore, refusal or neglect to accept registered mail is not a ground for an application for review under the *Act*.

The landlord appeared for the hearing but there was no appearance for the tenant or any submission of documentary evidence prior to the hearing, despite being served notice of the hearing in accordance with the *Act*. The landlord's affirmed testimony and documentary evidence was carefully considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to monetary compensation as a result of the tenant breaking a fixed term lease?
- Is the landlord entitled to a Monetary Order for damages to the rental suite?
- Is the landlord entitled to use the tenant's security deposit in full or partial satisfaction of the landlord's claim?

Background and Evidence

The landlord testified that the tenancy started on October 1, 2012 for a fixed term of one year after which the tenant was required to vacate the rental suite. A written tenancy agreement was completed and provided as evidence for this hearing. Rent was payable by the tenant in the amount of \$725.00 on the first of every month. The tenant paid a security deposit to the landlord on September 26, 2012 in the amount of \$350.00 which the landlord still retains. The landlord completed a move-in inspection report but did not complete a move-out one, as the tenant failed to attend on the last day of the tenancy.

The landlord testified that the tenant gave him a written notice on June 26, 2013 stating that she was vacating the tenancy on July 31, 2013 citing her reasons for leaving was that she could no longer stand the smell in the unit. In the same letter the tenant provided the landlord with her forwarding address and the tenant vacated the rental suite as per her written notice.

As a result, the landlord now seeks to recover lost rent for the remainder of the tenancy in the amount of \$1,450.00 relating to August and September, 2013. The landlord testified that he had not re-rented the rental suite to date as he was taking the opportunity to complete major renovations to the rental suite; however, the landlord

testified that it took him a considerable amount of time to rectify the damages caused by the tenant detailed below.

In relation to the landlord's claim for damages and losses under the *Act*, the landlord made the following monetary claim:

- \$126.00 which the landlord had estimated as unpaid utilities. The landlord phoned the utility company who were unable to provide him with a utility bill but he calculated this amount based on his utility usage when he resided in the unit.
- \$200.00 for carpet cleaning. The landlord provided a picture which he testified was of the living room carpet which he stated had not been cleaned and shampooed by the tenant when she left the rental suite. However, the landlord was unable to provide an invoice for the cost related to the carpet cleaning. The landlord also provided the move-in inspection report which shows that there were stains present on the living room carpets at the start of the tenancy.
- \$170.00 comprising of 10 hours of labour at \$17.00 per hour that the landlord incurred for the cleaning of the rental suite. In support of this, the landlord provided a multitude of pictures showing garbage left behind by the tenant, dirty fixtures, unclean cabinetry and kitchen appliances, missing light bulbs and a dirty sink.
- \$30.00 to haul out the garbage that the tenant had left behind as evidenced by the photographs the landlord had provided which are mentioned above.
- \$91.95 for the cost of replacing three locks. The landlord testified that the tenant had been provided three keys, as evidenced by the condition inspection report at the start of the tenancy which the tenant had signed, which she failed to return. As a result, the landlord purchased three locks for replacement and provided receipts relating to these items and a photograph showing the replacement of one lock which the landlord provided as an example.

Analysis

The tenant failed to appear for the hearing and did not provide any evidence in advance of this hearing. As a result, I have completed the following analysis of the landlord's claim in the absence of any evidence from the tenant to dispute the evidence and base my reasons on the landlord's affirmed testimony and documentary evidence provided.

I am satisfied that the landlord incurred a loss in the amount of \$200.00 claimed for cleaning the rental suite and hauling out the garbage. This is based on the landlord's testimony and the multiple photographs he presented to support this claim.

I am also satisfied that the landlord incurred the \$91.95 loss in the replacement of the rental suite locks. The condition inspection report signed by the tenant at the start of the tenancy shows that she was issued with three keys which the landlord claims were not returned. This is consistent with the landlord's invoice which shows the purchase of three locks and a photograph which shows one of the locks that had been installed.

In relation to the landlord's monetary claim for the unpaid utilities, the landlord has failed to satisfy me that these amounts were the actual amounts that the tenant owes to the landlord. The landlord did not provide any utilities bills to satisfy me that the tenant owes outstanding utilities. I also find that the landlord has failed to prove his claim for the \$200.00 carpet cleaning of the living room. This is based on the fact that the move-in condition inspection report shows that there were stains to the living room carpet at the start of the tenancy and this is the only photograph the landlord has provided of damage to the carpet at the end of the tenancy. As a result, I dismiss these two portions of the landlord's monetary claim.

In relation to the landlord's claim for lost rent, Section 7 of the *Act* and Policy Guideline 5 to the *Act*, states that in circumstances where the tenant ends the tenancy agreement contrary to the provisions of the *Act*, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit at a reasonably economic rent following the date that the notice takes legal effect. In this case, I find that the landlord failed to show sufficient evidence that he had mitigated losses he incurred by the tenant breaking the fixed term tenancy by making efforts to re-rent out the rental suite. However, the Policy Guideline goes on to say that an Arbitrator may award a reduced claim that is adjusted for the amount that might have been saved. Based on the landlord's evidence regarding the state of the rental suite that the tenant had left it in, I am satisfied that the landlord would have needed some time to get the suite back to a reasonable condition for re-rental and as a result, I award the landlord half of August, 2013 rent in the amount of \$362.50.

Therefore, I award the landlord a total monetary claim of \$654.45. As the landlord has been partially successful in this matter, the landlord is entitled to recover from the tenant the \$50.00 filing fee for the cost of this application pursuant to Section 72 of the *Act*.

Therefore, the total amount payable by the tenant to the landlord is \$704.45. As the landlord already holds a \$350.00 security deposit, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the *Act*. As a result, the landlord is awarded \$354.45.

Conclusion

For the reasons set out above, I grant the landlord monetary compensation pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$354.45**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and 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: November 13, 2013

Residential Tenancy Branch