



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OCEAN BAY HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNR, MNDC, MNSD, MND, 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, cost of cleaning, painting, credit checks and for the recovery of the filing fee. 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 for loss of income, cost of cleaning, painting, doing credit checks and for the recovery of the filing fee?

Background and Evidence

The tenancy started on November 01, 2012 for a fixed term of one year, with an end date of October 31, 2013. Rent was \$1,165.00 due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$582.50 and a key deposit of \$100.00.

Both parties agreed that in early June, the tenant provided the landlord with a three month notice to end tenancy. The landlord stated that the tenant informed him that she would be looking for someone to take over her lease for the last two months of September and October 2013 and that she would move out at the end of August 2013. The landlord stated that since the tenant notified him that she would sublet the rental unit, he did not make any efforts to find a new tenant.

The tenant advertised the availability of the unit and found a tenant who indicated that he would like to rent the unit for September 01. This new tenant contacted the building manager and credit checks were done. The manager agreed to accept this new tenant.

A move out inspection was done on August 30, 2013. Both parties filed a copy of the report. Upon inspection of the reports, I found that the landlord had made some additions to the report which did not show up on the tenant's copy. At the inspection, the landlord informed the tenant that the new tenant would be moving in on September 13.

The landlord also informed the tenant that she would be responsible for the loss of income for September 1-13.

The tenant contacted the new tenant and filed copies of text messages between them. She asked the new tenant the reason for moving in on September 13 instead of September 01 as he had indicated to her at the time he viewed the unit. He stated that the landlord needed some time to repair and paint and since he had temporary accommodation, he agreed to move in at the mutually agreed upon later date.

The landlord stated that the tenant did not clean the rental unit and is claiming \$220.00 for the cost of cleaning. The landlord filed a list of items that needed cleaning. The landlord waived the charges to clean under and inside the appliances, as he replaced them with new ones. The landlord stated that the blinds were not cleaned and the tenant agreed to the cost of \$105.00 for cleaning the blinds.

The landlord filed an invoice for a total of \$220.00 which includes \$105.00 for the cleaning of the blinds, \$25.00 for the removal of shelves and \$90.00 for general cleaning. The tenant stated that during the move out inspection, the landlord did not mention that the wall shelf and floor shelf needed to be removed and if he had done so, she would have removed them. She stated that the new tenant expressed interest in using them and therefore she left them there. The tenant stated that she cleaned the unit and provided photographs to support her testimony.

The landlord also filed photographs that show dirt on the floor under the appliances, dust on the blinds, a bathroom mirror and fan which were not cleaned, damage to one wall and missing bulbs. The tenant pointed out that the appliances were not on wheels and therefore she was unable to remove them to clean the floor beneath.

The landlord is also claiming \$200.00 for painting the walls. The tenant pointed out that her copy of the move out inspection report showed that the landlord had claimed \$150.00 and the report filed into evidence by the landlord showed the claim as \$200.00. The tenant filed a copy of a cleaning memo from the landlord which states "*The company pays for the re-painting of the suite.*" The landlord could not recall when the suite was last painted.

The landlord is claiming Manager and credit check fees in the amount of \$45.00 and the filing fee of \$50.00. The tenant stated that she returned the keys to the landlord and this is recorded on the tenant's copy of the move out inspection report as "returned". .

The landlord is claiming the following:

1.	Loss of income for September 01-13 and late fee	\$530.00
2.	Removal of shelves and blinds and suite cleaning	\$220.00
3.	Wall repair and painting	\$200.00
4.	Manager and credit check fees	\$45.00
5.	Filing fee	\$50.00
	Total	\$1,045.00

Analysis

1. Loss of income for September 01 – 13 and late fee - \$530.00

Section 45(2) 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:

- (a) Is not earlier than one month after the date the landlord receives the notice
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I find that the tenant breached the contract when she ended the tenancy prior to the end date of the fixed term. Therefore the landlord is entitled to any loss of income he incurred due to the breach of the contract by the tenant. However this entitlement is subject to the efforts made by the landlord to mitigate his losses.

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

In this case, I find that landlord was notified about the tenant's intention to end the tenancy around early June. The tenant moved out on August 22, 2013. The landlord stated that he did not make any efforts to find a new tenant because the tenant stated that she would find someone to take over her lease.

Since the landlord did not start looking for a tenant as soon as he found out that the tenancy was ending, I find that pursuant to section 7, the landlord did not make efforts to mitigate his losses and relied on the tenant to find a replacement. Therefore, I find that the landlord is not entitled to his claim for loss of income.

2. Removal of shelves, blind and suite cleaning - \$220

Based on the oral testimony of both parties and the discrepancies in the move out reports filed by the parties, I find that the rental unit was cleaned by the tenant. The standard of cleanliness may not have been to the standards of the landlord, but overall the unit was clean. The tenant agreed to cover the cost of cleaning the blinds in the amount of \$105.00. I accept the tenant's evidence that had the landlord informed her about the removal of the shelves, she would have done so. Accordingly I award the landlord \$105.00 for the cleaning of the blinds and dismiss the balance of the claim.

3. Wall repair and painting - \$200.00

The landlord was unable to recall when the unit was last painted. The cleaning memo provided by the landlord states that the landlord will cover the cost of painting. Therefore the landlord's claim for painting is dismissed

4. Manager and credit check fees - \$45.00

The legislation does not permit me to award credit check fees and therefore the landlord's claim is dismissed.

5. Filing fee - \$50.00

The landlord has not proven the majority of his claim and therefore must bear the cost of filing his application.

Overall the landlord has established a claim for \$105.00 for cleaning the blinds. I order that the landlord retain this amount from the security deposit of \$582.50 and the key deposit of \$100.00 in full satisfaction of the claim and return the balance to the tenant.

Conclusion

The landlord must return \$577.50 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: December 17, 2013

Residential Tenancy Branch