



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, MNR, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for a monetary order for the loss of income, cost of an electronic key (fob), the filing fee and to retain the security deposit in partial satisfaction of his claim. The tenant applied for a monetary order for compensation and for 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 the loss of income, cost of a fob and the filing fee? Is the tenant entitled to a monetary order for compensation and the filing fee?

Background and Evidence

The tenancy started in September, 2001 and ended on November 04, 2013. The rent at the end of the tenancy was \$847.00 due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$375.00.

The landlord testified that he intended to sell the rental unit and notified the tenant of his intentions to do so. On October 12, 2013, the tenant gave notice to end the tenancy and moved out on November 04, 2013. The landlord did not advertise the availability of the unit, as at that time, he had a pending offer for the sale of the unit. The landlord is claiming \$847.00 for the loss of income for the month of November, \$60.00 for a lost fob and \$50.00 for the filing fee.

The tenant agreed to cover the cost of the fob in the amount of \$60.00. The tenant stated that in December 2012, she reported the presence of ants in the rental unit. The landlord stated that he was notified in February 2013.

Both parties discussed using a less toxic method of extermination to protect the tenant's cat. The tenant stated that she purchased the product at her own cost, but found it to be ineffective. The tenant continued to notify the landlord but he only responded much later, in September 2013 when he visited to carry out some maintenance work inside the rental unit. The landlord provided some ant traps at that time.

The tenant is claiming the return of rent for one month as compensation for the presence of ants in the rental unit and the landlord's lack of action in the matter. The tenant also applied for the recovery of the filing fee.

Analysis

Landlord's application

The parties have agreed that the tenant owes the landlord \$60.00 for an unreturned fob.

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic 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 and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I accept the landlord's evidence in respect of the claim. In this case the tenant did not give the landlord adequate notice to end the tenancy, thereby causing the landlord to suffer a loss of income for the month of November 2013.

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, in order to minimize the loss, the landlord had to make efforts to re-rent the unit. However, the landlord intended to sell the rental unit and already had an offer from a prospective buyer, at the time the tenancy ended. Therefore the landlord was not looking for a tenant as he had no intention of renting the unit. Accordingly, I find that the unit was not available for rent and therefore the landlord did not suffer a loss of income. Since the tenant moved out on November 04, 2013, I find that the landlord is entitled to prorated rent in the amount of \$112.93 for the four days that the tenant occupied the rental unit in November.

Since the landlord has proven a portion of his claim I award the landlord the recovery of the filing fee of \$50.00.

Tenant's application:

The tenant testified that she reported the presence of ants to the landlord and he did not act in a timely manner. The tenant also testified that she purchased the product to treat the infestation at her own cost. The landlord provided her with ant traps approximately seven months after she first reported the problem to the landlord.

Based on the testimony of both parties, I find that by not applying for dispute resolution during the tenancy, the tenant took no steps to seek a solution to the agreed-upon problem. I further find that the tenant is now making a monetary claim for compensation three months after the tenancy ended and in response to the landlord's application for dispute resolution. Accordingly, I find that the tenant is not entitled to compensation because she failed to take steps to address the issue in a timely manner.

Since the tenant has not proven her case, she must bear the cost of filing her application.

Overall the landlord has established a claim for \$222.93 which consists of \$60.00 for the fob, \$112.93 for prorated rent for November 2013 and \$50.00 for the filing fee.

I order that the landlord retain this amount from the security deposit of \$375.00 plus the applicable interest of \$17.17. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$169.24. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$169.24**.

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: February 18, 2014

Residential Tenancy Branch

