



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a Monetary Order for damages to the unit and losses of revenue in respect to an unfulfilled fixed term lease.

Both parties attended the hearing and were given opportunity to present all relevant evidence and relevant testimony in respect to the claims and to make relevant prior submissions of evidence to the hearing and participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The tenant and landlord acknowledge receiving the evidence of the other.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The hearing had benefit of the tenancy agreement of this matter. This tenancy began as a fixed term tenancy commencing August 01, 2013 and was to end August 01, 2014. The monthly rent of \$1450.00 was due on the first day of the month. The landlord collected, and retains in trust, a security deposit in the amount of \$700.00 and a pet damage deposit in the amount of \$400.00. At the start of the tenancy the parties did not conduct a mutual move-in inspection in accordance with the Act or Regulation. At the end of the tenancy the parties conducted a mutual move-out inspection and completed the requisite report – submitted into evidence - the result of which is that the tenant agreed the landlord could retain \$200.00 of the security deposit for cleaning.

The parties agreed the tenant moved out of the rental unit on November 10, 2013 following an abundance of communication in respect to ending the tenancy due to

ongoing contentious issues with the rental unit identified by the tenant. The parties testified that as a result of that communication they agreed to end the tenancy and that the tenant would pay the landlord a per diem rate of \$48.33 until the tenant vacated on November 10, 2013. None the less, the landlord now seeks losses of revenue for November and December 2013, and January 2014 for breach of the fixed term of the agreement. The tenant acknowledges they owe the landlord the total of \$483.30 representing the agreed per diem amount, x 10 days.

The landlord further seeks to recover costs for cleaning the unit in the amount of \$200.00, repairs, and replacement of a carbon monoxide detector and a light fixture in the amount of \$211.49; and, replacement of the front entrance door purported to be damaged - described as "beat up". The tenant acknowledges they owe the landlord the agreed \$200.00 for cleaning and disputes that the landlord is owed the cost of the claimed repairs or replacements as none of these claims were identified as deficiencies in the move out condition inspection report and the landlord has not provided any further evidence to support these claims, other than the invoices / quotes respecting them.

Analysis

The burden of proof in this matter rests with the applicant landlord to establish their claim to compensation.

The Act states that a tenant who signs a fixed term tenancy agreement is responsible for the rent to the end of the term, and that any claim by the landlord for loss of revenue is subject to their statutory duty pursuant to section 7(2) of the Act to do whatever is reasonable to minimize any claimed loss. In this matter, however, I find the evidence of both parties is that they agreed to end the tenancy due to the tenant's ongoing issues respecting the rental unit, and that the parties agreed the tenant would compensate the landlord \$48.33 for each day they occupied the rental unit until they vacated: November 10, 2013. As a result, I grant the landlord unpaid rent for November 2013 in the agreed amount of **\$483.30**.

I find that a condition inspection report conducted in accordance with the Act and the Regulation respecting such reports is evidence of the condition of the rental unit on the date of the inspection unless there is a preponderance of evidence to the contrary. In this matter, I find the landlord has not provided evidence to support the balance of their monetary claims for damages, other than their claim for cleaning – as agreed by the parties at the end of the tenancy. The condition inspection report is silent respecting the deficiencies identified by the landlord giving rise to the costs for repairs and replacement. As a result, I grant the landlord the agreed amount of **\$200.00** for

cleaning, and **I dismiss** the balance of all other monetary claims for damages by the landlord.

I find that the landlord has established a total monetary claim in the sum of \$683.30 and is further entitled to recover their filing fee of \$50.00. The security deposit and pet damage deposit will be off-set from the award made herein.

Calculation for Monetary Order

Unpaid rent to landlord	\$483.30
Cleaning costs to landlord	\$200.00
Filing fee for the cost of this application to landlord	\$50.00
<i>Less security deposit and pet damage deposits - sum</i>	<i>-\$1100.00</i>
Total Monetary Award to tenant	(\$366.70)

Conclusion

I Order that the landlord may retain \$733.30 of the deposits held in trust in full satisfaction of their claim and I Order that the landlord returns the remaining \$366.70 to the tenant. **I grant** the tenant an Order under Section 67 of the Act for the balance due of **\$366.70**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: March 04, 2014

Residential Tenancy Branch

