



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MND, MNR, MNDC, CNR, 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 unpaid rent, loss of income, cleaning, repairs and for the filing fee. The tenant applied for compensation for the rent differential, meals, emotional distress due to having to move out of the rental unit while it was being repaired 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

Did the landlord suffer a loss of income when the tenant moved out without adequate notice to end the tenancy? Is the landlord entitled to a monetary order for unpaid rent, loss of income, cleaning, repairs and the filing fee? Is the tenant entitled to compensation?

Background and Evidence

The tenancy started on August 01, 2013. The monthly rent was \$1,000.00 due on the first of each month. The tenancy ended on February 01, 2013. The rental unit is located in the basement of the landlord's home. The landlord lives upstairs.

On October 29, 2013, the hot water tank broke down and the ensuing flood of water caused damage to the rental unit. The landlord rented a storage unit for the tenants' belongings and assisted the tenants in moving their items into storage. The insurance company informed the landlord that the restoration would take 6-8 weeks and required the unit to be vacant. The tenants requested that the security deposit be returned to them to assist them with finding accommodation. The landlord obliged and offered to let them out of the lease but the tenants indicated that they would like to return after the completion of the restoration.

The tenants moved out after the flood and found individual accommodation. Tenant RM rented accommodation for \$600.00 per month and tenant RJ rented a room for \$200.00 per week. The tenants are claiming the rent differential which works out to be \$1,000.00 for the time they were away from the rental unit. The tenants filed two statements as rent receipts that confirm the above mentioned costs of alternative accommodation. These statements are not signed by the landlords and are written by one of the tenants. The tenants stated that they had extra expenses for transit to work, for food, laundry, moving costs and loss of wages, for the period spent in alternative accommodation.

The tenants moved back into the unit on January 11, 2014. The landlord requested rent for half of January and the tenants refused to pay. There was communication between the parties attempting to settle this dispute. Copies of this communication were filed into evidence.

The parties were unable to reach an agreement and on January 26, 2014 the tenant gave the landlord verbal notice to end the tenancy effective February 01, 2014. The landlord stated that the tenant did not provide written notice and moved out on February 01, 2014. The landlord advertised the availability of the unit on a popular website for a tenancy starting immediately. He testified that he received only one call in response to his advertisement. The landlord stated that by February 10, 2014, he realized that he was not going to find a tenant for February and decided not to rent the unit.

The landlord stated that the tenants left the unit in a condition that required cleaning and paint touch ups. The landlord also stated that there were scratches on the new flooring and missing bulbs and door knob. The landlord is claiming \$350.00 for cleaning and repair and has filed photographs to support his claim.

The landlord is claiming:

1.	Unpaid rent for January 2014	\$500.00
2.	Loss of income for February 2014	\$1,000.00
3.	Cleaning and repair	\$350.00
4.	Filing fee	\$50.00
	Total	\$1,900.00

The tenants agreed that on January 26, 2014, they verbally informed the landlord of their intentions to end the tenancy on February 01, 2014. The tenants denied having damaged the door knob or having left burnt out bulbs in the rental unit. The tenants agreed that some cleaning was required. The tenants also stated that the scratches to the floor could have been made by the restoration workers.

The tenants filed copies of invoices for amounts paid for food and an undated receipt for furniture

The tenant is claiming the following:

1.	Rent differential	\$1,100.00
2.	Food	\$2,200.00
3.	Transit	\$217.25
4.	Wage loss	\$112.00
5.	Damaged items	\$166.88
6.	Laundry	\$88.00
7.	Emotional Distress	\$600.00
8.	Moving costs	\$142.00
9.	Filing fee	\$50.00
	Total	\$4,676.13

Analysis

Landlord's application:

1. Unpaid rent for January 2014 - \$500.00

The tenants agreed that they moved back into the rental unit on January 11, 2014 and did not pay rent for January. Section 26 of the *Residential Tenancy Act*, states that a tenant must pay rent when it is due under the tenancy agreement. In the absence of evidence to the contrary, I find that the tenants did not pay rent for January 2014 and owes the landlord \$500.00.

2. Loss of income for February 2014 - \$1,000.00

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.

In this case, the tenants ended the tenancy on February 01, 2014 by giving the landlord verbal notice to end the tenancy on January 26, 2014.

Since the tenants provided inadequate notice to end the tenancy, the tenants are responsible for any loss of income that the landlord may have suffered. 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.

Having heard the testimony of both parties, I accept the landlord's testimony that he advertised the unit on line for immediate occupancy and received only one call. However the landlord also decided on February 10, 2014 that he no longer wanted to rent the unit due to lack of success in finding a tenant. Based on the above, I find that the landlord has established a claim for loss of income for the period of February 01 to February 10, 2014 which is the period during which he actively looked for a tenant. Accordingly I award the landlord the prorated rent of \$357.00 for this period.

3. Cleaning and repair - \$350.00

The landlord filed photographs that indicate that there was some cleaning to be done and some damage to the wall that required repair. The landlord also filed photographs that show scratches to the new laminate installed during the restoration work. The tenants agreed that they had left some cleaning to be done. Based on the photographs, I find that one wall was damaged and that the laminate was scratched. I have considered the above and find it appropriate to award the landlord \$200.00 for cleaning, repair to the wall and loss of value of the laminate.

4. Filing fee - \$50.00

Since the landlord has proven most of his claim, I award him the recovery of the filing fee.

Overall the landlord has established a claim of:

1.	Unpaid rent for January 2014	\$500.00
2.	Loss of income for February 2014	\$357.00
3.	Cleaning and repair	\$200.00
4.	Filing fee	\$50.00
	Total	\$1,107.00

Tenant's application:

1. Rent differential - \$1,100.00

The tenants rented shared accommodation from the landlord but for the period of the restoration work, the tenants chose to live separately.

Therefore, the tenants incurred additional costs for rent. Upon review of the rental receipts filed by the tenants, I find that both are typed by the tenant and are not signed by the respective landlords. In addition, the tenants chose to rent separately and therefore I find that the landlord is not responsible for the rent differential for separate accommodation.

2. Food - \$2,200.00

The tenants paid full rent at their respective places of residence and therefore should have had cooking facilities. The landlord is not responsible for the cost of food and therefore I dismiss this portion of the tenant's claim.

3. Transit - \$217.25

The tenant chose to live at a distance from her place of work and therefore is responsible for the additional cost of transportation.

4. Wage loss - \$112.00

The tenant has not filed any evidence to support this claim and therefore it is dismissed.

5. Damaged items - \$166.88

The tenants filed a receipt for the cost of furniture in this amount. The date portion of the receipt has been removed prior to filing. The tenant's insurance generally covers the damage or loss a tenant may incur as a result of an unforeseen event such as this. However, since the landlord agreed to cover the cost of the tenants' furniture, I award the tenants this amount.

6. Laundry - \$88.00

The rental unit was equipped with laundry machines and laundry was included in the rent. Since the alternative accommodation did not have laundry facilities, I find that the tenants are entitled to the cost of laundry in the amount of \$88.00.

7. Emotional distress - \$600.00

Where a rental unit is damaged by an unforeseen event such as flooding, the landlord is not responsible for loss or damage under the *Act*, unless the landlord has been negligent in the duty owed to the tenant. In this case, the landlord provided assistance to the tenants to remove their property from the flooded unit, store it temporarily in the landlord's home and then move it to storage paid for by the landlord.

I find that the landlord acted responsibly and was not in a position to take steps to prevent the flooding caused by the breakdown of the hot water tank. Therefore I find that the tenant is not entitled to compensation for emotional distress.

8. Moving costs - \$142.00

The landlord agreed to cover the cost of moving.

9. Filing fee - \$50.00

Since the tenants have proven a portion of their claim, I award them the recovery of the filing fee.

Overall the tenant has established a claim as follows:

1.	Rent differential	\$0.00
2.	Food	\$0.00
3.	Transit	\$0.00
4.	Wage loss	\$0.00
5.	Damaged items	\$166.88
6.	Laundry	\$88.00
7.	Emotional Distress	\$0.00
8.	Moving costs	\$142.00
9.	Filing fee	\$50.00
	Total	\$446.88

Overall the landlord has established a claim of \$1,107.00 and the tenant has established a claim of \$446.88. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$660.12 which consists of the difference in the established entitlements of both parties. Accordingly, I grant the landlord an order under section 67 of the *Residential Tenancy Act* for \$660.12. 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 \$660.12.

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 07, 2014

Residential Tenancy Branch

