



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for: damages to the rental unit; for unpaid rent or utilities; to keep all or part of the security and pet damage deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (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 but none were identified at the start of the hearing.

The Landlord appeared for the hearing and provided affirmed testimony and written evidence prior to the hearing. The Tenant appeared for the hearing and provided affirmed testimony along with a legal advocate who made submissions on behalf of the Tenant. No issues were raised by the parties in relation to the service of the hearing documents and evidence in accordance with the Act and Rules of Procedure.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed the evidence and testimony before me; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

- Was the Tenant justified in breaking the fixed term tenancy?
- Is the Landlord entitled to lost rent?
- Is the Landlord entitled to monetary compensation for damages to the rental unit?

Background and Evidence

Both parties agreed that this tenancy was due to start on September 1, 2013 according to a signed written tenancy agreement provided as evidence for the hearing. However, the Tenant moved in on August 22, 2013. The tenancy was for a fixed term period of two years which was due to expire on August 31, 2015; however, the Tenant vacated the suite on January 31, 2014.

Rent during the tenancy was payable by the Tenant in the amount of \$625.00 on the first day of each month and the Tenant paid the Landlord \$300.00 as a security deposit on July 31, 2013 and \$125.00 as a pet damage deposit in increments until it was fully paid by November, 2013. The Landlord returned the pet damage deposit to the Tenant on February 7, 2013.

The Landlord made the Application to keep the Tenant's security deposit along with the other issues before the tenancy had ended as she feared that the Tenant may not give a forwarding address at the end of the tenancy. However, the Tenant provided the Landlord her forwarding address after the tenancy had ended on April 7, 2014 and the Landlord amended the Application to include the Tenant's forwarding address.

The Landlord and Tenant agreed that a move in condition inspection report had been completed at the start of the tenancy on August 22, 2013. The Tenant and a friend met with the Landlord and her partner to conduct the move out inspection report on January 30, 2014. However, the Tenant testified that the Landlord's partner got so aggressive towards them that they could no longer take part in the inspection and left midway through the inspection. The Landlord submitted that both parties were yelling and arguing about the details on the report and the report was completed in the absence of the Tenant after she left. The condition inspection report was provided as evidence for the hearing.

The Landlord testified that the Tenant informed him that she would be leaving the tenancy and issued her with a written notice on December 19, 2013. The notice was provided as evidence and states that the Tenant was leaving the tenancy for a number of reasons, namely the relationship had deteriorated, the rental suite was illegal, the Landlord had not provided a mail box, the suite was cold and noisy. The notice states that the Tenant will be vacating the rental suite on February 1, 2014

The Landlord explained to the Tenant that she could not break a fixed term tenancy and was required to sublet the rental suite. The Landlord testified that the Tenant made no

attempts to sublet the rental unit and as a result vacated the suite at the end of January, 2014.

The Landlord explained that she had tried to re-rent the suite by placing advertisements at the end of January, 2014 as she was not confident the suite would be made available for rent at the start of February, 2014 due to the Tenant's clutter and that this was not conducive to do any viewings. As a result, she placed two advertisements at the end of January, 2014 and two advertisements at the end of February, 2014. The Landlord provided documentation to support this and now seeks to claim the advertising costs back from the Tenant. However, the Landlord had not provided all the receipts/invoices for the costs claimed and was only able to establish documentation to support a claim of \$94.34.

The Landlord testified that she was not able to re-rent the suite until the middle of March, 2014 and as a result now claims loss of rent for the month of February and two weeks of March, 2014 in the amount of \$937.50.

The Landlord also claimed \$150.00 for damage caused by the Tenant to a bedroom wall and for the repair and painting of a damaged wall in the rental suite. The Landlord provided a quote for the cost of rectifying this damage. However, the damage testified to was not referred to on the move out condition inspection report and the Landlord had not supplied photographic evidence of this damage.

The Tenant's legal advocate made the following submissions:

- The move out condition inspection report was not conducted;
- The Tenant left the tenancy because the rental suite was always cold;
- The Tenant suffered from increased anxiety due to the poor living conditions and provided a letter from her physician supporting this;
- The Tenant's right to peaceful and quiet enjoyment had been violated by the Landlord;
- The Tenant made an Application on December 17, 2013 requesting that she be able to break the fixed term tenancy; and
- The Landlord took too long to mitigate her loss only starting to advertise the rental suite at the end of January, 2014.

The Tenant testified that she broke the fixed term tenancy because she was being harassed by the Landlord and his partner and could not face the bad attitude displayed by them. The Tenant was asked twice whether she had addressed any of the reasons

she claimed during the hearing for breaking the tenancy with the Landlord in writing. The Tenant replied that it was difficult to deal with these issues as the Landlord was aggressive and she felt uncomfortable approaching them. The legal advocate referred to the Tenant's letter submitted on December 19, 2014 as the Tenant's written account of the problems with the tenancy and submitted that the Landlord's response to this letter on December 26, 2013 was evidence that they had known about the problems.

The Landlord submitted that the written response was a rebuttal to the Tenant's allegations which were not true and had no basis of truth.

In relation to the damages claimed by the Landlord in the amount of \$150.00, the legal advocate questioned the Landlord around the means of access provided to the Tenant at the start and end of the tenancy which led to changes being made to the rental suite. The legal advocate submitted that the Tenant was not responsible for this damage.

Analysis

In relation to the Landlord's claim for the security deposit, I find that the Landlord made the claim to keep the Tenant's security deposit within the time limits afforded by Section 38(1) of the Act.

Fixed term tenancies are designed to prohibit a Tenant or Landlord from ending the tenancy and provide certainty for a period of time. However, the Act provides certain grounds under which such a tenancy may be ended. Section 45(3) of the Act states that a Tenant may end a fixed term tenancy if a Landlord has failed to comply with a material term of the tenancy agreement **and has not corrected the situation within a reasonable period after the Tenant gives written notice of the failure.**

I have focused my attention on the highlighted portion of Section 45(3) of the Act in analyzing whether the Tenant had complied with this provision of the Act. The important issue here is whether the Tenant was entitled to end the tenancy and not whether the format of the notice complied with the Act.

Section 45(3) of the Act requires that if there is a breach of a material term of a tenancy agreement, the Tenant is required to address these issues in writing and give the Landlord a reasonable amount of time to rectify the issues **before** the Tenant decides to end the tenancy of their own accord with a written notice that complies with the Act. Alternatively, the Act also allows a Tenant to seek the end of a tenancy through an arbitrator's order or seek to assign or sublet the tenancy.

Based on the foregoing, I find that the Tenant failed to address any of her concerns with the Landlord in writing and did not give the Landlord an opportunity to correct the problems as required by the Act. Instead, the Tenant relies on the Tenant's notice to end tenancy as the document which complies with Section 45(3) of the Act, which it does not. A document addressing the problems with the Landlord asking for resolution to a material breach is separate and different to a Tenant's notice to end tenancy and it is in this respective order that the Tenant should have issued the Landlord these documents, which she did not. In addition, there is no evidence or record of the Tenant applying for dispute resolution asking for the tenancy to be terminated as submitted by the legal advocate. In addition, the Tenant did not supply sufficient evidence to show that she sought to sublet or assign the tenancy to mitigate any loss to the Landlord.

Therefore, I find that the Tenant did not have a right under Section 45(3) of the Act to break the fixed term tenancy. As I have found that the Tenant was not entitled to break the fixed term tenancy, I will analyze the Landlord's claim for compensation as follows.

Section 7 of the Act states that a party not complying with the Act, the regulations or their tenancy agreement must compensate the other for damage or loss that results and if the party makes a claim, they must do whatever is reasonable to minimize the damage or loss.

The Landlord claimed that she had supplied documentary evidence supporting her claim for advertising costs. However, after confirming with the parties, I was only able to determine a claim for the advertising costs in the amount of \$94.34.

In determining the Landlord's claim for lost rent, I have weighed the submission of the Landlord that she did not want to advertise the rental suite because she was not sure if the Tenant would leave the rental suite in a rentable state and that the tenancy had deteriorated to such an extent that viewings would not have yielded a successful Tenant, against the submission of the Tenant's legal advocate that the Landlord had been given plenty of notice to mitigate her loss.

As a result, I find that it is more appropriate to compensate the Landlord for the Tenant's breach of the Act and as a result, I award the Landlord one month's rent in the amount of **\$625.00**.

As the Tenant had breached the Act, I also award the Landlord the **\$50.00** filing fee, pursuant to Section 72(1) of the Act. In addition, I award the Landlord **\$94.34** for the advertisement costs which were proved through the invoices supplied for this hearing.

In relation to the Landlord's claim for \$150.00 for damages to the rental suite, I find that a party leaving in the middle of a condition inspection report does not necessarily invalidate a condition inspection report. However, in this case, the damages claimed by the Landlord are not documented on the move out condition inspection report. Furthermore, the Landlord has not provided sufficient supporting or corroborative evidence of these damages and as a result, I dismiss this portion of the Landlord's claim.

Therefore, the total amount payable by the Tenant to the Landlord is \$769.34.

As the Landlord already holds \$300.00 in the Tenant's 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 \$469.34.

Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$469.34**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make the payment in accordance with the Landlord's instructions.

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: April 25, 2014

Residential Tenancy Branch

