



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

A hearing related to this dispute, the file number for which is documented on the first page of this decision, was conducted by a different arbitrator on January 13, 2014. The Landlord failed to appear for the hearing and as a result, the arbitrator rendered a decision in the absence of the Landlord on January 22, 2014. The decision gave the Landlord leave to re-apply for loss of rent for a period after December 15, 2013 and for damages to the rental suite.

As a result, this hearing was convened by way of a conference call in response to the Landlord's Application for Dispute Resolution (the "Application") for a Monetary Order for unpaid rent or utilities relating to the lost rent from December 15, 2013 onwards and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act") relating to damages to the rental suite. The Landlord also applied to recover the filing fee for this Application.

The Landlord and the Tenant appeared for the hearing and provided affirmed testimony during the hearing as well as written evidence prior to the hearing. No issues in relation to the service of the Notice of the Hearing documents and the written evidence were raised by the parties.

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 and to cross-examine the other party, and make submissions to me.

I have reviewed the evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

- Did the Tenant follow the provisions of the Act in ending a month to month tenancy?
- Is the Landlord entitled to loss of rent?
- Is the Landlord entitled to monetary compensation for damages to the rental suite?

Background and Evidence

Both parties agreed that this month to month tenancy started on May 1, 2013 and ended when the Tenant left the rental suite on December 10, 2013. Rent was payable by the Tenant in the amount of \$1,100.00 on the first day of each month.

The Landlord testified that the Tenant had served him a written notice to end his tenancy on December 2, 2013. The written notice had not been provided as evidence for the hearing but the Landlord testified that it was dated December 1, 2013 and explained that the Tenant would be leaving the tenancy in the middle of December, 2013.

The Landlord testified that he had served the Tenant with a 1 Month Notice to End Tenancy for Cause in November, 2013 but had given the Tenant two months (the end of January, 2014), to vacate the suite.

The Landlord explained that he tried to re-rent the suite after spending some time cleaning the rental suite after the Tenant had vacated it and placed an advertisement for the rental suite on 'Craigslist' on December 14, 2013. The Landlord provided a copy of the advertisement and a statement of the advertisement history showing the date it was placed; the Landlord also referred to the fact that the advertisement was renewed on January 10, 2014 as he was unable to find a renter for January, 2014. As a result, the Landlord claims one and half months of lost rent from the Tenant in the amount of **\$1,650.00**.

The Tenant testified that he had given written notice to the Landlord on December 1, 2013 that he would be vacating the suite and that he had given the Landlord plenty of notice (30 days) to re-rent the suite for January 1, 2014.

When the provisions of the Act in relation to the ending of a month to month (periodic) tenancy were explained to the Tenant (which are also explained below), the Tenant submitted that that relationship between him and the Landlord had become strained and he had no choice but to leave as the Landlord had cut off his internet and other utility services that he relied on to provide for his family.

The Tenant submitted that he attempted to mutually agree with the Landlord to end the tenancy but the Landlord was not willing and therefore he had no choice to leave the tenancy. The Tenant then submitted that he feared for his family's safety as the Landlord had started to steal his belongings.

The Landlord testified that he had cut off the Tenant's internet due to a dispute between them but this was the reason why the Tenant had been issued with the 1 Month Notice to End Tenancy for Cause and this had all been discussed in the previous hearing.

In relation to the Landlord's claim for damages to the rental suite, the Landlord testified: that the Tenant had broken a ceiling light shade fixture which he had to replace at a cost of **\$40.14**; the Tenant had lost two sink strainers which the Landlord replaced for a cost of **\$17.90**; and the Tenant had failed to clean the carpets at the end of the tenancy as he had pets for which he claims **\$244.20**. The Landlord provided invoices to verify the amounts being claimed.

The Tenant agreed with the damage to the ceiling light fixture and the two missing sink strainers. In relation to the carpet cleaning the Tenant submitted that he had vacuumed the carpets at the end of the tenancy but had not steam cleaned or shampooed them; he also confirmed that he had pets which were not caged.

Analysis

In relation to the damages claimed by the Landlord to the rental suite, I find that based on the undisputed evidence of the Landlord and the invoices which support the costs claimed, the Landlord is entitled to the **\$58.04** claimed for the damage to the ceiling light fixture and the two missing sink strainers.

Policy Guideline 1 to the Act details the responsibility of both the Landlord and Tenant for residential premises. In relation to carpets, the guideline explains that a Tenant is expected to steam clean or shampoo the carpets at the end of the tenancy if they have had pets. In this case, I find that the Tenant did have pets and failed to steam clean or

shampoo the carpets after the tenancy ended. As a result, I award the Landlord the **\$244.20** claimed for carpet cleaning.

Section 45(1) of the Act explains a Tenant's obligations when ending a month to month tenancy. The Act states that a Tenant **must** give written notice to the Landlord of at least one **full rental month** before ending the tenancy.

However, section 45(3) of the Act also states that a Tenant may end a tenancy if the Landlord has failed to comply with a material term of the tenancy **and** has not corrected the breach within a reasonable period **after** the Tenant gives the Landlord written notice **of the breach**.

In this case, I find that the Tenant provided insufficient evidence that the Landlord had breached a material term of the tenancy and that written notice of the breach and a reasonable time for correction of the alleged breach was provided to the Landlords **before** the Tenant gave written notice to the Landlord to end the tenancy. The previous decision indicates that the relationship became strained between the parties after the Landlord had indicated that he would be serving the Tenant with a the notice to end tenancy; the decision then goes on to state that the Tenant then subsequently issued his written notice to end the tenancy because the Tenant had found a new place to rent, making no reference to any breaches of the Act by the Landlord.

Therefore, in accordance with the Act, if the Tenant provided the Landlord with written notice to end a month to month tenancy on December 1 or December 2, 2013, the Tenant would not have been legally allowed to end the tenancy until January 31, 2014 and would have been responsible for paying rent until such time.

Section 53(3) of the Act allows a Landlord to give a notice to end tenancy for a period that is longer than the required period on the Notice. However, this does not give the Tenant a right to end the tenancy earlier without giving proper notice under the Act as stipulated above.

Section 7(2) of the Act states that a party making a claim for compensation for damage or loss for non compliance with the Act must do whatever is reasonable to mitigate the loss. The Landlord provided sufficient evidence in the form of testimony and written documents which show that the Landlord tried to re-rent the suite as soon as practicable and that he was unable to do so for the latter half of December, 2013 and for January, 2014. As a result, I accept the Landlord's evidence and I find that the Landlord is entitled to the lost rent claimed in the amount of **\$1,650.00**.

As the Landlord has been successful in his claim, I also award the Landlord the **\$50.00** filing fee for the cost of making the Application pursuant to Section 72(1) of the Act.

Therefore, the total amount awarded to the Landlord is \$2,002.24.

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 **\$2,002.24**. 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 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 Act.

Dated: May 30, 2014

Residential Tenancy Branch

