



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing her to retain the security deposit. Both parties participated in the conference call hearing.

The hearing was originally convened on April 16 at which time the tenant advised that while she had received the landlord's application and evidence, she had not received information regarding the dispute resolution process and was unaware that she could submit evidence to rebut that of the landlord. The tenant asked for an adjournment and although the landlord objected, I determined that if I refused the adjournment request, the prejudice to the tenant would outweigh that of the landlord if the request were granted. For this reason, I ordered that the hearing be adjourned and I directed the parties to exchange evidence as far in advance of the reconvened hearing date as possible.

The hearing was reconvened on June 11. At the hearing, the tenant advised that she had tried to personally serve the landlord with her evidence on June 5 but the landlord would not open the door of her home. The landlord testified that she was out of the country at the time the tenant attempted to deliver her evidence.

At the first date of the hearing, I specifically told the tenant to serve her evidence on the landlord as soon as possible in order to give the landlord adequate opportunity to respond to that evidence. Although the tenant had 2 months in which to serve her evidence, she chose to wait until 6 days before the hearing to attempt to serve it. I accept that the landlord was not at home at the time the tenant attempted to serve her evidence. I refused to accept the tenant's written evidence as her failure to serve it on the landlord was due entirely to her own delay and failure to follow my instructions at the first hearing. This decision is made based on the landlord's documentary evidence and the oral testimony of both parties.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on September 28, 2013 and ended on January 31, 2014. Rent was set at \$800.00 per month and the tenant paid an \$800.00 security deposit. The tenancy agreement stipulates that the tenancy is to last for a period of 6 months, ending on March 31, 2014.

The landlord seeks to recover \$175.00 in rent from the month of November which the tenant paid to the boyfriend of the landlord's daughter. The tenant testified that the landlord told her that the boyfriend was there to ensure everyone in the building paid their rent. The landlord denied having told the tenant that the boyfriend had any role in managing the building.

The landlord seeks to recover \$800.00 in liquidated damages pursuant to a term in the addendum to the tenancy agreement which provides as follows:

A liquidated damage clause in the amount for 800.
[reproduced as written]

The landlord claimed that this clause was triggered by the tenant ending the tenancy prior to the end of the fixed term.

The landlord seeks to recover loss of income for the months of February and March as the tenant did not stay for the entire fixed term as required by the tenancy agreement. As evidence that she advertised the rental unit, the landlord provided a one page printout of emails showing that she received emails from craigslist on January 16 and 27 and March 2 advising her that she had to deal with her advertisement. The printout also showed 11 responses to the advertisement.

The tenant testified that she moved out of the rental unit prior to the end of the fixed term because the landlord entered her suite without notice, removed the white leather furniture which had been part of the tenancy and tampered with the tenancy agreement, which the tenant had kept hidden in her underwear drawer.

The landlord seeks to recover \$73.00 in unpaid utilities, claiming that the tenant is obligated to pay the utilities divided by the number of people occupying the residential property and that during one period of time, the tenant was the only occupant of the

property which the landlord believes makes her responsible for the entire utility bill. The tenant argued that the landlord withdrew laundry facilities and that she should not be responsible for the entire bill when the unit was empty. She stated that she was responsible for just 1/5 of the bill.

The landlord seeks to recover \$200.00 as the cost of cleaning dog feces from the back yard for 10 hours and \$50.00 for cleaning the cook top, underneath the refrigerator and bed and replacing burned out light bulbs. She testified that the other tenant performed the cleaning and provided a letter from another tenant who uses the back yard in which he stated that he raked the dog feces into a corner and that the landlord and her daughter took an entire afternoon to remove the feces and dead leaves in the back yard.

The landlord also seeks to recover the \$50.00 filing fee paid to bring her application.

Analysis

First addressing the claim for unpaid rent for November, the landlord submitted a copy of a text message in which she stated "[the boyfriend] is there to make sure everybody pays rent or goes to hell." I find that through this statement, the landlord indicated that the boyfriend was authorized to act as her agent and I find that the tenant was justified in paying part of her rent to the boyfriend. I dismiss the claim for unpaid rent for November.

I accept that the tenancy was set to continue until March 31, 2014 and that the tenant ended the tenancy early. Apart from the agreement of the landlord, the only way a tenant can end a fixed term tenancy early is if the landlord breaches a material term, the tenant informs the landlord of the breach in writing and offers a reasonable period of time in which to correct the breach and ends the tenancy *after* the landlord has failed to correct the breach. I find insufficient evidence to show that the tenant advised the landlord that she had breached a material term or giving her time to correct the breach and therefore find that the tenant did not have the right to end the tenancy early.

The Act requires that when a party makes a claim for such losses, they are required to make reasonable attempt to minimize their losses. It is clear that the landlord advertised the rental unit and attempted to re-rent the unit and I find that she acted reasonably in attempting to minimize her losses. I therefore find that she is entitled to recover the 2 months of lost income resulting from the tenant's breach of the fixed term and I award her \$1,600.00 which represents 2 months' rent.

Liquidated damages are typically triggered when a party breaches the contract, but in order to rely on such a term, it must clearly specify what breach must occur in order for the liquidated damages to become payable. The term in the addendum to the tenancy agreement refers to liquidated damages, but it does not specify what the liquidated damages are for. While typically they are payable when the tenant ends the fixed term prior to the end of the term, this clause does not specify that this is the triggering event. I find that the liquidated damages provision is so unspecific that it is not enforceable and for this reason I dismiss the landlord's claim for liquidated damages.

In order to make a claim for utility payments, the landlord must prove the amount of the utilities which were payable. The tenancy agreement is completely silent on the means by which the tenant's portion of the utility payments were to be calculated and as there is disagreement as to whether the tenant was to be responsible for 1/5 of the bill or, as claimed by the landlord, a portion equal to any other residents at the time of the billing period, I find that the landlord has not proven the amount to which she is entitled. Further, the only documentary evidence submitted by the landlord on this point is a single utility bill showing that \$277.88 was payable on January 20, 2014. The landlord provided no explanation as to whether part of that bill had been paid by other tenants or why she was claiming just \$73.00 of that bill. I find that the landlord has failed to prove the amount of her claim and it is dismissed.

The landlord claimed to have spent 10 hours cleaning dog feces from the back yard, but her own evidence shows that the other tenant claimed to have gathered all of the feces into one corner. While the tenant was responsible to remove the feces created by her pet, I do not accept that it took the landlord 10 hours to remove feces from one corner of the yard. I find that the claim is greatly exaggerated and I award the landlord \$10.00, which represents 30 minutes of work to remove the feces. As the backyard was shared with other tenants, the tenant would not have been responsible for leaf removal and I am uncertain as to whether leaf removal was also part of the landlord's claim.

I dismiss the landlord's claim for the value of cleaning parts of the rental unit. There is no supporting evidence to show that those areas required other cleaning and I am not satisfied that the cleaning was required.

As the landlord has been substantially successful in her claim, I find that she should recover the \$50.00 filing fee.

Conclusion

The landlord has been awarded \$1,660.00 which represents \$1,600.00 in lost income for February and March, \$10.00 for cleaning the back yard and the \$50.00 filing fee. I

order the landlord to retain the \$800.00 security deposit in partial satisfaction of the claim and I grant her a monetary order under section 67 for the balance of \$860.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: July 10, 2014

Residential Tenancy Branch

