



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRYSTAL RIVER COURT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MND, MNR, MNSD, OLC, ERP, RP, 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 loss of income, lawn repair and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied for compensation, for the return of the security deposit and for the recovery of the filing fee. The tenant also applied for an order directing the landlord to comply with the *Act* and carry out repairs.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord acknowledged receipt of evidence submitted by the tenant and stated that he had sent his evidence package to the dispute rental address because that was the address provided by the tenant on her application for dispute resolution. The tenant denied having received the evidence. Since the landlord mailed the evidence package to the address provided by the tenant, I consider the tenant served with the landlord's evidence. Both parties gave affirmed testimony.

The tenancy ended on December 01, 2014 and therefore the tenant's application for an order directing the landlord to comply with the *Act* and carry out repairs is moot and accordingly dismissed.

The landlord has applied for loss of income for January 2015 and for the cost of lawn repair. The landlord filed an estimate for lawn repair and has not yet started the work due to freezing temperatures. Since the landlord does not have the actual cost of repair and since the landlord may find a tenant for January, I dismiss these portions of his application with leave to reapply.

Issues to be decided

Did the landlord suffer a loss of income when the tenant broke the fixed term lease? Is the landlord entitled to a monetary order for loss of income and the filing fee? Is the tenant entitled to the return her security deposit and to the recovery of the filing fee?

Background and Evidence

The parties entered into a fixed term tenancy on June 13, 2014 with an end date of June 01, 2015. The monthly rent was \$1,000.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$500.00.

The tenant stated that on November 18, 2014, she discovered the presence of rats inside the rental unit and reported it to the landlord by email. The landlord read the note on November 19 and instructed his maintenance staff member to check out the problem. Traps were set on November 20, 2014 and at the tenant's request, the landlord provided one night of hotel stay to the tenant.

The landlord also stated that in her letter dated November 18, 2014, the tenant complained about the thermostat not working well and the landlord contacted the company who had installed it. On November 26, 2014, the company sent out a repair man to fix the thermostat.

On November 24, 2014, the tenant sent a note by email to the landlord informing him that she had found another place and would be moving out on December 01, 2014.

On November 21, 2014, the landlord called in a commercial pest control company who visited the rental unit on November 26 and set several rat traps. They returned on November 28 to inspect the traps but were denied access. They conducted an inspection on December 02 and in a letter dated December 06, 2014, the pest control company informed the landlord that the rodents had been successfully eliminated and potential entry points were blocked. The letter also stated that it appeared that the tenant had overstated the rodent issue in the home.

On November 28, 2014, at the tenant's request a health inspector visited the home and in a letter dated December 01, 2014, the inspector confirmed the presence of an active rodent infestation.

The tenant stated that she because of the rat problem; she spent a lot of time at her friend's place in a neighbouring city. The tenant is claiming \$700.00 towards the extra cost of gas that she incurred for commuting between the two cities. The tenant also stated that a vehicle belonging to a friend needed \$161.00 worth of repairs due to a hole made by a rat. The tenant filed a copy of an invoice which confirmed that the master cylinder was replaced due to *rat eaten holes*. The tenant is claiming this amount.

The tenant also testified that she intended to live at the rental unit for one year but had to move out because of the rats. The tenant is claiming \$200.00 for the cost of moving and \$100.00 for pain and suffering.

The landlord stated that he started advertising the availability of the rental unit on two websites starting November 26, 2014 and had some showings. However, the landlord was unable to find a tenant for December and January. The landlord is claiming a loss of income for both months. As discussed during the hearing, the landlord may pursue loss of income for January after January 01, 2015.

Analysis

Landlord's application:

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 tenant ended the tenancy prior to the end date of the fixed term and therefore is responsible for any loss of income that the landlord may have suffered. S. 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, fielded calls and had a couple of showings. I also accept that the rental market may have slowed down for the holiday season. Therefore; I find that despite his efforts, the landlord was not able to find a tenant for December and has therefore established a claim for loss of income for December in the amount of \$1,000.00. Since the landlord has proven his case, I award him the filing fee of \$50.00.

Tenant's application:

Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant.

In this case, I find that the landlord acted promptly in response to the tenant's complaint of a rodent infestation. The tenant informed the landlord in a note dated late November 18 and the landlord responded the next day. On November 24, 2014, the tenant gave the landlord notice to end the tenancy effective December 01, 2014. Based on the testimony of both parties, I find that the landlord acted responsibly by setting traps the very next day and contacting a commercial pest control company two days after he received the tenant's complaint.

Since the landlord responded to the complaint immediately and took the appropriate action, I find that the tenant did not have reason to end the tenancy and accordingly is not entitled to her claim for the cost of fuel, moving costs, vehicle repair and pain and suffering. Since the tenant has not proven her claim, she must bear the cost of filing her application.

Overall the landlord has established a claim of \$1,050.00 which consists of \$1,000.00 for loss of income plus \$50.00 for the filing fee. I order that the landlord retain the security deposit of \$500.00 in partial satisfaction of his claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$550.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord may retain the security deposit. I grant the landlord a monetary order in the amount of \$550.00.

The tenant's claim is dismissed.

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: December 23, 2014

Residential Tenancy Branch

