



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on September 11, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover a loss of rent?

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

WL testified that this tenancy started on a month to month basis on September 01, 2013. This was a verbal agreement between the landlord and tenant. Rent for this unit was \$650.00 per month due on the 1st of each month.

WL testified that the tenant vacated the rental unit without proper notice on April 30, 2014. The landlord testified that the tenant did not give the landlord the opportunity to inspect the unit as no notice was given by the tenant. The landlord testified that he was unable to re-rent the unit because of the condition the tenant left the unit in. Due to this the landlord seeks to recover a loss of rent for May, 2014 of \$650.00.

WL testified that the unit had been newly renovated prior to the tenant moving in. The tenant was the first person in the unit. At the end of the tenancy the unit was left with a very bad odour that could not be removed by simply airing the unit out. WL had to rent an ozone machine to clean the air. These normally work over a few days but the odour was so strong that the landlord had to have the ozone machine running for a week. These machines use a chemical which is harmful to humans when they clean the air so no one could enter the unit for the first week of May. WL seeks to recover the cost of hiring this machine of \$100.80.

WL testified that the unit was left in a filthy condition. WL hired a cleaner to come into the unit after the ozone machine had finished. The unit still had an odour which the cleaner has documented on her invoice. WL had to continue to air the unit and lit scented candles to eliminate the continuing odour. The cleaner documented her work that took 10 hours at \$20.00 an hour. This work consisted of washing the walls and floors, removing mineral buildup in the shower stall, scrubbing the sinks and toilet,

washing the kitchen and bathroom cabinets and scouring the fridge/freezer, microwave and stove top. WL seeks to recover \$200.00 for the costs incurred to clean the unit.

WL testified that he also did some work required in the unit to finish of the original renovations in May, 2014.

WL testified that he had claimed \$150.00 to replace a couch and \$160 for labour to paint the unit. WL withdraws these sections of his claim. WL seeks to recover the filing fee of \$50.00.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me. I refer the parties to 45(1) of the *Act* which states:

Tenant's notice

45 (1) *A tenant may end a periodic 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, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Whether or not a written tenancy agreement was in place, a tenancy existed for the purposes of the *Act* as a unit was offered and rent exchanged hands for that unit.

Therefore, the tenant is required to provide written Notice as described above. As the tenant failed to do so the landlord is entitled to recover rent for the following month as

the earliest the tenancy could legally end would be May 31, 2014. In all circumstances the landlord has an obligation to mitigate any loss by making reasonable attempts to re-rent the unit in a timely manner pursuant to s. 7(2) of the *Act*.

WL testified that the unit could not be re-rented or shown due to the condition the tenant left the unit in. I refer the parties to the Residential Tenancy Policy Guidelines # 3 which states, in part, that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

I am satisfied from the evidence before me that WL had to rent an Ozone machine to clear the strong odour from the unit and to hire a cleaner to clean the unit. As the cleaner was not able to access the unit while this machine was working I find the landlord had to operate the ozone machine for a week, then air the unit before the cleaner could get into the unit to do her work on May 15, 2014. Consequently, due to the tenant's failure to leave the rental unit in a clean condition as prescribed under s. 32 of the *Act* I find the unit was not rentable for the first half of May. However, the landlord also testified that he did not attempt to re-rent the unit for the second half of May and decided to finish off some renovation work in the unit. I therefore find the landlord did not fully mitigate the loss and should have made some attempt to re-rent the unit for the second half of May, 2014. Consequently, I find the landlord is only entitled to recover half a month's loss of rent for May of \$325.00.

With regard to the landlord's claim to recover \$100.80 for the hire of the ozone machine and \$200.00 for the cleaner, I am satisfied that the landlord has established a claim that the unit was left with a strong odour and that the hire of this ozone machine was necessary. I further find that the unit required cleaning. I therefore uphold the landlord's claim for \$300.80.

As the landlord's claim has merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$675.80** pursuant to s. 67 and 72(1) of the *Act*. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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 02, 2015

Residential Tenancy Branch

