



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord: MNSD, MNDC, FF
Tenant: MNSD, FF

Introduction

This hearing was convened in response to cross-applications by the parties.

The landlord filed their application September 11, 2014 pursuant to the *Residential Tenancy Act* (the Act), subsequently amended for Orders as follows:

1. A Monetary Order for unpaid rent – Section 67
2. A Monetary Order as compensation for damage or loss – Section 67
3. An Order to retain the security deposit to offset their claim - Section 38
4. An Order to recover the filing fee for this application (\$100) - Section 72.

The tenant filed their application September 15, 2014 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for the return of the security deposit - Section 38
2. An Order to recover the filing fee for this application (\$50) - Section 72.

Both parties attended the hearing and were given opportunity to present all *relevant* evidence and relevant testimony in respect to their claims and to make *relevant* prior submission of evidence to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present. The parties were apprised that despite all of their evidence only *relevant* evidence would be considered in the Decision.

Both parties acknowledged receiving the evidence of the other – except for 2 items from the landlord to the tenant. The first item was the landlord's amendment of their monetary claim from \$11,000.00 to \$1,700.00, and one late submission of evidence by the landlord consisting of a new tenancy agreement with a new tenant for October 01, 2014. The landlord was unable to send these items of evidence to the tenant due to an address change by the tenant that was not communicated. However, these items of

evidence were explained to the tenant and the tenant confirmed they accepted the evidence as explained; and, on instruction to the landlord to send a copy of it to the tenant at their new address, forthwith.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?
Is the tenant entitled to the monetary amounts claimed?

Each party bears the burden of proving their respective claims.

Background and Evidence

The undisputed evidence in this matter is as follows. The rental unit is a house. The tenancy began March 01, 2014 as a written tenancy agreement for a 1 year fixed term - submitted into evidence. The tenant vacated August 29, 2014 pursuant to an e-mail of the same date citing that the landlord placed the rental unit for sale and did not follow through on certain promises made respecting certain work. At the outset of the tenancy the landlord collected a security deposit and pet damage deposit in the sum amount of \$1400.00 which the landlord retains in trust. During the tenancy the contractual payable rent was in the amount of \$1600.00 due in advance on the 31st day of each month.

The tenant sought the return of their deposits.

The landlord testified they sought loss of rent revenue for the month of September 2014 in the amount of \$1600.00 because the tenant vacated with insufficient / ineffective notice to vacate, contrary to the Act. The landlord provided that they advertised the rental unit online on September 05, 2014 upon their immediate return from travel and were successful in re-renting the unit for October 01, 2014. It was explained to the parties that the landlord effectively mitigated their losses, and their claim on application, to the benefit of both parties. The tenant claims that the rental unit was occupied for the month of September 2015. They claim they saw signs of it when they drove by and that the landlord's previous realtor told them in a telephone conversation the landlord had rented the house for September 2014. The landlord denied it was occupied for September 2014 as it was impossible for it to occur given the tenant vacated days earlier. The tenant further argued that the tenancy was somehow compromised pursuant to the legal doctrine of *Frustration*, because the landlord placed the rental unit for sale and the landlord did not follow through on a promise to deal with carpeting. The legal doctrine of *Frustration* was summarily explained to both parties. However, and

moreover, the tenant testified that their move from the rental unit was driven by a change in employment.

Analysis

I have reviewed and considered all of the relevant evidence in this matter. On preponderance of all the evidence submitted, and on balance of probabilities, I find as follows.

A tenant who signs a fixed term tenancy agreement is responsible for the rent to the end of the term – even if they give the landlord a notice to end the tenancy commonly referred to as a “one month notice to vacate” as prescribed by Section 45 of the Act.

I do not accept the tenant’s argument the rental unit was occupied in September 2014 as the tenant has not provided any evidence of it. I further do not accept the tenant’s argument the tenancy was *Frustrated*. I find that none of the prevailing circumstances in this matter prevented the parties from complying with their responsibilities to each other under their tenancy (contractual) agreement.

The landlord’s claim for loss of revenue is subject to their statutory duty pursuant to Section 7(2) of the Act to do whatever is reasonable to minimize the loss. I find that the landlord took reasonable steps to minimize the loss in this situation. As a result, I find that the landlord has established a total monetary claim of \$1600.00 comprised of unpaid rent for September 2014. As the landlord was successful in their application as amended, they are entitled to recover their filing fee in the *partial* amount of \$50.00. The landlord’s request for registered mail costs is dismissed as this is a cost associated to litigate their claim. All parties are responsible for their own costs to advance their claims – other than their filing fee.

As the landlord’s award is greater than the tenant’s claim the tenant’s application is effectively **dismissed**. The tenant’s security deposit and pet damage deposit are factored and offset as follows.

Calculation for Monetary Order

| | |
|--|------------------|
| landlord’s award for September 2014 loss of revenue | \$1600.00 |
| Landlord’s filing fee | \$50.00 |
| <i>Minus tenant’s deposits held in trust by landlord</i> | <i>- 1400.00</i> |
| Monetary Order to landlord | \$250.00 |

Conclusion

The tenant's application is dismissed.

The landlord's application, in part, has been granted. The balance of their claims is dismissed, without leave to reapply.

I Order that the landlord may retain the tenant's deposits in the sum of \$1400.00. **I grant** the landlord a Monetary Order under Section 67 of the Act for the balance of their award in the amount of **\$250.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 14, 2015

Residential Tenancy Branch

