



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for unpaid rent and for damage to the unit or loss pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's Application for Dispute Resolution with Notice of Hearing and evidence package. The landlord confirmed receipt of the tenant's evidence package submitted for this hearing. Based on the testimony of both parties, I find the materials for hearing sufficiently served in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, damage and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit towards any monetary award? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on April 1, 2014 for a fixed term of one year. A copy of the written tenancy agreement was submitted for evidence at this hearing. The rental amount of \$1750.00 was payable on the first of each month. The landlord confirmed that he continues to hold an \$875.00 security deposit paid by the tenant on April 3, 2014. The landlord applied to recover \$1333.95 from the tenant and to retain her security deposit in partial satisfaction of that amount. After receiving a Notice to End Tenancy, the tenant

vacated the rental unit on September 30, 2014. The landlord testified that the unit was re-rented for October 1, 2014.

The landlord testified that the tenant's daughter resided in the building and, when the tenant applied for her own rental unit as her primary residence, she was accepted. He testified, supported by his documentary evidence that the strata corporation that manages the residential premises does not allow short term stays.

The landlord testified that over the course of this tenancy, he became aware that the tenant and her daughter were renting out the tenant's rental unit as a vacation rental. He testified that he attempted to discuss this arrangement with the tenant and ask that she cease using the unit in this manner but that she denied any knowledge of rental of her suite.

The landlord testified that both he and the strata corporation investigated and found evidence that the tenant's suite was being used as a vacation rental. He submitted evidence for this hearing that illustrated the rental unit had been advertised online as a place available for rent for short stays and vacations. The landlord's evidence submitted for this hearing also included;

- A cautionary note titled "terms of service" from "AIRBNB";
- Online ads for the suite as a nightly rental and follow-up comments and reviews by customers;
- A property management report dated July 16, 2014 indicating that multiple people have been using the fob over a few months;
- A letter dated August 12, 2014 to the landlord reporting the tenant was in contravention of the strata by-laws regarding leasing the strata lot.

The landlord submitted that, within the residential tenancy agreement provided the tenant is responsible for certain fees when the agreement is not fulfilled. He provided undisputed testimony that the landlord had paid for the tenant's move-in costs. He submitted that, since the tenant could no longer reside in the unit and he was forced to seek new tenants, the landlord incurred the costs of the efforts to re-rent and the new tenant's move-in costs. The tenant submitted that, "there was no agreement for the tenant to pay the next tenants move in fee."

The landlord sought the \$250.00 move fee referenced in the tenancy agreement. The landlord provided a receipt indicating that he had paid the strata company for the tenant's move-in fee and a receipt indicating that he had paid the strata company for the new tenant's move-in on October 1, 2014.

The landlord also sought \$208.95, the cost of a fan that he claims the tenant said she would repair before moving out but did not repair. The tenant testified that any damage to the fan should be considered reasonable and general wear and tear. Alternatively, she testified that there is no “concrete evidence that the tenant or their guests caused this.”

The tenant responded to the landlord’s allegations by stating that she didn’t believe she did anything wrong. She testified that sometimes friends or family would use the rental unit as well. Therefore, it was not always rented out for profit. In her written submissions, she states, “the landlord did not lose any rental payment as indicated by the receipt indicating occupancy by new tenant Oct 1st provided by the landlord.”

The landlord completed a condition inspection report at the start and end of this tenancy. The landlord testified that the tenant did attend the move out inspection but refused to sign the report at the end of the walk through of the rental unit. The landlord submitted a copy of that condition inspection report, as well as proof that he attempted to allow the tenant to attend for condition inspection and proof that the report was sent to her after it was completed. Under the section called “End of Tenancy”, the landlord has written “no damage except range top fan broken re-renting fee, move-in fee + fan repair charges re being requested by owner [sic].”

The landlord sought a monetary amount as follows,

Item	Amount
Re-Renting Cost	\$875.00
Strata Move In Fee	250.00
Invoice for fan repair	208.95
Less Security Deposit	-875.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$508.95

The tenant did not submit an application with respect to this tenancy. However, in both her written materials and her submissions at this hearing, she stated that she sought reimbursement for \$3500.00 (the rent for August and September 2014) as well as the return of her \$875.00 security deposit and \$1670.00 in lost wages due to threats by the landlord. The tenant, without an application sought \$6045.00 from the landlord.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The landlord is required to prove on a balance of probabilities that he incurred costs relating to re-renting the unit; a move-in fee; and the repair of a fan totalling \$1383.95. The landlord has proven with his testimony and his evidence that the fan within the rental unit was broken during the course of the tenancy. Therefore, I find the tenant is responsible for the cost of the fan. The landlord has provided receipts to reflect both the cost of the fan and the maintenance charge for its repair. I find the landlord is entitled to \$208.95 for the repair of the fan.

The landlord sought the \$250.00 move fee. He provided proof that he paid the fee therefore incurring a loss. However, the landlord did not establish that this cost stemmed directly from the tenant's violation and contravention of the *Act* and the tenancy agreement. While there is little doubt that the tenant was in contravention of her tenancy agreement and the *Residential Tenancy Act*, I find that this fee was an inevitable cost of the landlord's business that he would have incurred when the tenant moved out in the future.

The landlord also sought \$875.00 or a half month's rent to recover the cost of re-renting the unit in these circumstances. These circumstances included; the tenant ending her tenancy after six months of a year lease; the tenant conducting an unauthorized business and using the rental unit for unauthorized purposes over the duration of her tenancy; the tenant causing some damage to the rental unit and the need to re-rent well before the landlord anticipated; the tenant jeopardizing the safety of the other occupants in the building as well as the landlord's property.

Beyond the consequences to the landlord as a result of the tenant's business venture and breach of the one year lease, the landlord provided evidence of the efforts that were taken to ensure that the unit was re-rented as soon as possible. It was in fact re-rented for occupancy as soon as the tenant moved out. The landlord was proactive in mitigating any loss as a result of this end of tenancy because of the tenant's actions. The landlord provided evidence of the efforts made to list the property and submitted a

schedule of showings of the property as well as other time demanding work including processing applications and checking references.

Residential Tenancy Policy Guideline No. 30 defines a fixed term tenancy.

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date. At least one Court has interpreted "predetermined expiry date" to include a provision in the tenancy agreement that the tenancy will terminate as a result of a specified occurrence or circumstance.

By entering into a fixed term tenancy, both tenant and landlord are subject to an obligation that does not apply in most tenancies: they must abide the predetermined expiry date. When one party does not meet the obligation of the agreement, particularly with respect to the length of the tenancy, then one may have to compensate the other party. In this particular circumstance, I find that the landlord has shown that he has had costs related to re-renting the unit and that those costs are in excess of \$875.00. Therefore, I find the landlord entitled to \$875.00.

Pursuant to section 72(2) of the Act, I find the landlord is entitled to retain the security deposit in the amount of \$875.00 paid by the tenant at the outset of this tenancy.

Section 72(2) of the Act reads as follows:

72 (2) *If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted*

... (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant...

As the landlord has been successful in this application, I find the landlord is entitled to recover the filing fee for this application.

I note that I have no formal application before me with respect to the compensation sought by the tenant.

Conclusion

I issue a monetary order in favour of the landlord as follows;

Item	Amount
Re-Renting Cost	\$875.00
Invoice for fan repair	208.95
Less Security Deposit	-875.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$258.95

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: June 29, 2015

Residential Tenancy Branch

