



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF
MNDC, FF

Introduction

This hearing concerns 2 applications:

- i) by the landlord for a monetary order as compensation for unpaid rent and utilities / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee; and
- ii) by the tenant for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee.

Both parties attended and / or were represented and gave affirmed testimony.

Issue(s) to be Decided

Whether either party is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is a bedroom located within a larger rental unit. The landlord also resides in the larger rental unit, however, she is not the owner, and has her own landlord. In short, the landlord sublets the subject unit to the tenant. Common areas within the larger rental unit include kitchen and bathroom facilities.

Pursuant to a written tenancy agreement the fixed term of tenancy is from October 15, 2014 to February 28, 2015. Monthly rent is \$750.00, and the parties agree that it is due and payable in advance on the first day of each month. A security deposit of \$375.00 was collected. While there is a move-in condition inspection report in evidence, it bears the signature of neither party.

By letter dated February 28, 2015, the tenant gave notice to end tenancy effective that same date. The landlord testified that she also received the tenant's forwarding address on that date. A move-out condition inspection report was not completed.

The landlord commenced online advertising for new renters almost immediately after receiving the tenant's notice, and a new renter was found effective from April 01, 2015. The landlord's application for dispute resolution was filed on Monday, March 16, 2015, and the tenant's application was later filed on Wednesday, June 24, 2015.

Analysis

Based on the testimony of the parties and the documentary evidence which includes, but is not limited to, a detailed narrative and timeline submitted by the parties, the various aspects of the respective claims and my related findings are set out below.

LANDLORD

\$750.00: *loss of rental income for March 2015*

Section 45 of the Act addresses **Tenant's notice**, and provides in part:

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.

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement**:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their

tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that the tenant's written notice dated February 28, 2015 to end tenancy effective on that same date, does not comply with the above statutory provisions. I further find that the landlord attempted to mitigate the loss of rental income for March 2015 by undertaking to advertise for new renters in a timely fashion, ultimately succeeding in finding a new renter from April 01, 2015. In the result, I find that the landlord has established entitlement to the full amount claimed.

\$38.39: *telecommunications "bundle" and hydro utilities for March 2015*

The tenancy agreement clearly indicates that none of the above are included in the rent, and the tenant testified that he shared these costs with the landlord during the term of tenancy. For reasons similar to those set out immediately above, I find that the landlord has established entitlement to the full amount claimed.

\$60.00: *cleaning in the unit*

The attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 35: **Condition inspection: end of tenancy**

Further, section 37 of the Act addresses **Leaving the rental unit at the end of a tenancy**, and provides in part:

37(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and....

In the absence of comparative results of move-in and move-out condition inspection reports, or any other conclusive evidence to support a claim that the unit was not left "reasonably clean" at the end of tenancy, this aspect of the application must be dismissed.

\$50.00: *filing fee*

As the landlord has achieved a measure of success with the main aspect(s) of her application, I find that she has also established entitlement to recovery of the filing fee.

Total entitlement: \$838.39 (\$750.00 + \$38.39 + \$50.00)

TENANT

\$600.00: *loss of quiet enjoyment*
\$100.00: *harassment*
\$200.00: *illegal entry to room*
\$500.00: *loss of use of a portion of premises*
\$1,052.79: *cost of restaurant & takeout meals*

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**::

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 27 of the Act addresses **Terminating or restricting services or facilities**, and section 29 of the Act speaks to **Landlord's right to enter rental unit restricted**.

I find that the evidence suggests these are 2 individuals with quite different personal dispositions, who were frequently at odds in relation to what was "reasonably clean." I find that the landlord was overbearing and judgmental in this regard. However, even while the tenant may have felt "harassed," or felt that the landlord ever improperly entered his room, or felt that access to full use of kitchen facilities was unreasonably restricted, there is no evidence that he addressed these matters directly with the

landlord during the tenancy, and prior to the time when he abruptly ended tenancy.

Neither is there any evidence that the tenant sought the involvement of the Residential Tenancy Branch during the tenancy in order to attempt to remedy any of the

aforementioned concerns. Indeed, it was nearly 4 months after the tenancy ended when the tenant filed his application for dispute resolution.

On balance, I find that the tenant has proven a limited breach of his right to quiet enjoyment. It is less clear that there were unauthorized entries into his unit. I also find that the tenant's use of kitchen facilities, restricted to before 10:00 p.m., served to diminish the value of tenancy, but in a minor way. Overall, I find on balance that the tenant has established entitlement to compensation in the limited amount of **\$300.00**, which is calculated on the basis of \$15.00 per week over a tenancy which spanned approximately 20 weeks from October 15, 2014 to February 28, 2015.

\$50.00: *filing fee*

As the tenant has achieved a measure of success with the main aspect(s) of his application, I find that he has also established entitlement to recovery of the filing fee.

Total entitlement: \$350.00 (\$300.00 + \$50.00)

Offsetting the respective entitlements, I find that the landlord has established a net claim of **\$488.39** (\$838.39 - \$350.00). I order that the landlord retain the security deposit of **\$375.00**, and I grant the landlord a **monetary order** for the balance owed of **\$113.39** (\$488.39 - \$375.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$113.39**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims 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 15, 2015

Residential Tenancy Branch

