



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MNSD, FF, O

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

The landlord's application is a request for a monetary order for \$1120.26, a request for recovery of the \$50.00 filing fee, and a request to retain the full security deposit towards the claim.

The tenant's application is a request for a monetary order for the return of the full security deposit of \$315.00, and a request for recovery of the \$50.00 filing fee.

Issue(s) to be Decided

The issues are whether or not the landlord or the tenant has established monetary claim against the other and if so in what amount.

Background and Evidence

This tenancy began on May 6, 2014, for a fixed term ending April 30, 2015, and with a monthly rent of \$630.00.

The security deposit of \$315.00 was also paid on May 6, 2014.

The tenant moved out of the rental unit on December 27, 2014.

The landlord testified that:

- The tenant breached the tenancy agreement by vacating the rental unit without giving the required Notice to End Tenancy.
- The tenant asked to be allowed to vacate the rental unit at the end of December 2014, however they stated they would not allow her to move out at the end of December 2014 but did agree that if she gave a one-month Notice to End Tenancy they would allow her to break the fixed term tenancy agreement.
- The tenant never gave any Notice to End Tenancy and vacated the rental unit on December 27, 2014 without informing them she was doing so.
- As a result of the breach of the tenancy agreement, they lost the full rental revenue for the month of January 2015, in the amount of \$630.00.
- Further, there is a liquidated damages clause in the tenancy agreement that requires the tenant to pay \$315.00 if she ends the tenancy prior to the end of the fixed term.
- This is a furnished unit, and at the beginning of the tenancy the tenant removed numerous boxes of items from the rental unit and agreed to replace them at the end of the tenancy. The tenant further agreed in writing that if she did not replace the items she would pay \$100.00 to the landlords to replace the items she removed. The tenant did not replace the items and therefore they believe the tenant should pay the agreed amount.
- Although the tenant left the unit reasonably clean, it was not professionally cleaned as required in the tenancy agreement.
- The tenant also broke a light globe during the tenancy and therefore they are asking for replacement cost for that fixture.
- Therefore the total amount they are asking for is as follows:

January 2015 lost rental revenue	\$630.00
Liquidated damages	\$315.00
Moving stored boxes	\$100.00
Cleaning	\$60.00
Replace light fixture	\$15.26
Subtotal	\$1120.26
Filing fee	\$50.00
Total	\$1170.26

The tenant testified that:

- Landlord asked her to leave saying she was a poor tenant for complaining about bugs in the rental unit and a stove that was leaking gas.
- She therefore started looking for places as soon as she could, and when she found a place she told the landlord he would be moving at the end of December 2014.
- When she told the landlord she was moving the landlord said she would not accept the late notice and told her she would have to give one month written notice.
- She does not believe it is reasonable that the landlord would, on one hand tell her she wanted to move, and then when she finds a place to move to tell her she cannot move without one-month notice.
- She therefore does not believe she should be paying for any rent for the month of January 2015 nor should she have to pay liquidated damages since it was the landlord's idea for her to move.
- She did sign an agreement to pay \$100.00 to the landlord if she failed to move the boxes of items back into the rental unit at the end of her tenancy, however she does not believe this is a reasonable charge as the boxes were only four doors down and the landlord could easily move them back. The tenant further stated that she did not fully understand her right's when she signed the agreement to pay \$100.00.
- Further, since she believes the rental unit was infested with bugs she thought she was doing the landlord of favor by not moving the items back into the rental unit until after the landlord could deal with bugs.
- She also does not believe she should have to pay anything for cleaning because they left the rental unit clean.
- Further there was no light fixture broken by the tenant and therefore this charge as well should not be allowed.
- The landlord also failed to do the moveout inspection report required under the Residential Tenancy Act and therefore there is no way for the landlord to prove that the light fixture was damaged at the end of the tenancy.
- She therefore believes that her full security deposit should be returned in the landlord's full claim denied.
- She is also asking for double the security deposit because the landlord did not apply for dispute resolution within the 15 day time limit. She vacated the rental unit on December 27, 2014, and the landlord did not apply for dispute resolution until January 12, 2015.

In response to the tenant's testimony the landlord testified that:

- She never asked the tenant to leave the rental unit, that was entirely the tenant's idea.
- They found no bugs in the rental unit after the tenant vacated, and the stove was leaking because the tenant had torn a knob off of the stove.
- No moveout inspection report was done because she was unaware that the tenant was moving on 27 December 2014.
- She did agree to allow the tenant to move out of the rental unit before the end of the lease, but only on the condition that the tenant gave one full month Notice to End Tenancy which the tenant never gave.

Analysis

It is my finding that the tenant has not met the burden of proving that the landlord ever asked her to move out of the rental unit, and therefore the tenant did not have the right to move out of the rental unit without giving the required Notice to End Tenancy.

Therefore since the tenant did not give the required Notice to End Tenancy and since the landlord was unable to re-rent the unit for the month of January 2015 it's my decision that the tenant is liable for the lost rental revenue for that month.

Further, since the tenant ended the tenancy prior to the end of the fixed term, the tenant is also liable for the liquidated damages agreed to in the tenancy agreement.

It is also my finding that the tenant is liable for the \$100.00 charge she agreed to when she moved items out of the rental unit. The tenant signed an agreement to either replace the items or pay \$100.00 to the landlord and since she failed to replace those items she must pay that amount.

I will not however allow the landlords claim for cleaning. Under the Residential Tenancy Act a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not

entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenant failed to meet the "reasonable" standard of cleanliness required. The landlords argued that the tenant agreed to the \$60.00 charge in the tenancy agreement; however a clause in a tenancy agreement that conflicts with the Residential Tenancy Act is not enforceable.

I also deny the landlords claim for replacing a broken fixture, because the tenant denies breaking any fixture during the tenancy and therefore it is basically just the landlord's word against that of the tenants. The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met.

I will allow the landlords request for recovery of the \$50.00 filing fee as I have allowed the majority of the landlords claim.

Therefore the total amount of the landlord's claim I have allowed is as follows:

January 2015 lost rental revenue	\$630.00
Liquidated damages	\$315.00
Replacing stored items	\$100.00
Filing fee	\$50.00
Total	\$1095.00

I therefore allow the landlords request to retain the full security deposit towards the claim and order that the tenant pay the difference of \$780.00.

I will not order that the landlord pay double the security deposit because, in the tenants letter to the landlord at the end of the tenancy, the tenant states that she will expect within 15 days after December 30, 2014 the security deposit will be returned and therefore that indicates to me that the tenant believed she still had the right to the rental unit until December 30, 2014. Therefore it's my finding that the end of tenancy date was December 30, 2014, and therefore the landlord applied for dispute resolution within the 15 day time limit

Conclusion

As stated above I have allowed \$1095.00 of the landlords claim and the remainder of the claim is dismissed without leave to reapply. The landlord may therefore retain the full security deposit of \$315.00 and I have issued an Order for the tenant to pay \$780.00 to the landlord.

The tenant's application is dismissed in full, without leave to reapply.

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 27, 2015

Residential Tenancy Branch

