



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served by mailing, by registered mail to the forwarding address provided by the tenant. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided the tenancy would start on July 1, 2014 and end on June 30, 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$2375 per month payable on the first day of each month. The tenant paid a security deposit of \$1187.50 at the start of the tenancy.

On January 28, 2015 the tenant gave a one month written Notice to End Tenancy that he was leaving at the end of February 2015. The tenant failed to provide documentary evidence. He testified he was extremely frustrated for the following reasons:

- The rental unit is on the 31st floor and there was supposed to be 3 elevators servicing the rental unit. On many occasions there was only one elevator.
- As a result on many occasions there were significant delays and he was not able to leave his rental unit in time to make important appointments.
- The strata corporation and landlord failed to properly post the times when the elevators would be out of service.
- He advised the landlord on many occasions but the problems continued.
- The landlord agreed to reduce the liquidated damage claim to \$600. He was not advised of the landlord's intention to make a claim for loss of rent.
- He paid the move out fee and gave the receipt to a representative of the landlord.
- The landlord failed to properly mitigate its loss.

The representative of the landlord responded as follows:

- She acknowledged receiving complaints from the tenant about the lack of a sufficient elevator service but there was nothing she could do about it as this was a strata matter.
- She was off on medical leave at the time. However, she testified that all units are advertised on the landlord's website, Craigslist, Kijiji etc.

The landlord was not able to re-rent the rental unit for March 2015.

Analysis

Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. A tenant is responsible to pay the rent for the entire fixed term unless the landlord has breached a material term of the tenancy agreement as provided in section 45(3) of the Act and subject to the landlord's obligation to mitigate. Section 45(3) provides as follows:

45(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The tenant failed to provide evidence that he gave the landlord written notice of the breach and a reasonable period of time to correct the situation. Further, the tenant alleged but failed to present sufficient evidence of the landlord's failure to mitigate. I do not accept the submission of the tenant that the landlord agreed it would not claim for loss of rent for March. The e-mail the tenant read out states the tenant is responsible if the landlord is not able to re-rent the rental unit for March. The term of the tenancy agreement provided that the tenancy was to end on June 30, 2015. I determined the landlord sufficiently attempted to mitigate its loss but was not able to rent the rental unit for March 2015 and suffered a rental loss as a result. I determined the landlord is entitled to \$2300 for unpaid rent for March 2015.

- b. The tenancy agreement contains a liquidated damage clause of \$2375. It is not necessary for me to consider whether this is unenforceable as being a penalty and not a genuine pre-estimation of the loss. The parties agreed the landlord's claim is limited to \$600 for this.
- c. I dismissed the landlord's claim of \$200. The landlord failed to present evidence this charge was paid by the landlord. The tenant testified he has already paid this sum directly to the strata corporation and gave a copy of the receipt to the landlord.
- d. I dismissed the landlord's claim of \$200 as the landlord failed to prove this claim. The letter from the strata corporation states the landlord may be fined an amount of \$200 for each contravention. The landlord failed to present evidence they were fined and paid this sum.
- e. The landlord claimed \$245.70 for the cost of painting. The tenant agreed to \$150 charge on the move out inspection. I determined the landlord failed to prove the amount claimed. However, the landlord is entitled to \$150 for this claim as agreed by the tenant.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$3050 plus the \$50 filing fee for a total of \$3100. The tenant may have claims against the landlord for the reduced value of the tenancy caused by the problems with elevator but the tenant has not filed a claim and that is not before me at this time.

Security Deposit

I determined the security deposit plus interest totals the sum of \$1187.50. I determined the landlord is entitled to retain this sum. **I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$1912.50.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: August 17, 2015

Residential Tenancy Branch

