



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for: damages to the rental unit; unpaid rent; to keep the Tenant’s security and pet damage deposit; and to recover the filing fee.

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Tenant during the 26 minute duration of the hearing and no submission of evidence prior to the hearing. As a result, I turned my mind to the service of the documents for this hearing by the Landlord.

The Landlord testified that she served a copy of the Application, the Notice of Hearing documents and the documentary evidence to the Tenant by registered mail on April 13, 2015. The Landlord testified that she sent this to the Tenant’s forwarding address which was provided to the Landlord’s agent at the end of the tenancy in an email. The Landlord provided a copy of this email into evidence as well as the Canada Post tracking number in oral evidence to verify this method of service.

The Canada Post website indicates that the documents were received and signed for by the Tenant on April 15, 2015. Therefore, based on the undisputed evidence before me, I find the Tenant was served with the required documents pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”). The hearing continued to hear the undisputed evidence of the Landlord.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid/lost rent and costs associated with breakage of the fixed term tenancy?

- Is the Landlord entitled to monetary compensation for damage to the suite?
- Is the Landlord allowed to keep the Tenant's security and pet damage deposit in partial satisfaction of the monetary claim?

Background and Evidence

The Landlord testified that this tenancy began on November 15, 2014. A written tenancy agreement was completed and provided as evidence. The agreement shows that the tenancy was a fixed term tenancy of one year due to end on November 15, 2015. At the end of the fixed term period it was intended that the tenancy was going to continue on a month to month basis.

Rent under the agreement was payable by the Tenant in the amount of \$1,500.00 on the first day of each month. The Tenant paid \$750.00 each for a security and pet damaged deposit (the "Deposits"), both of which the Landlord still retains. The tenancy agreement includes the service address of the Landlord and the Landlord's telephone contact number. A move in Condition Inspection Report (the "CIR") was completed on November 12, 2015.

The Landlord testified that on March 27, 2015 she sent the Tenant an email relating to a gas leak in the building. In response to this email the Tenant replied on March 29, 2015 stating that she was going to be moving out of the rental unit on April 1, 2015. In the same email the Tenant claims that she had sent the Landlord an email a month prior requesting to sublet the rental unit and that she had posted an advertisement for re-rental and had provided her with several e-mail addresses of parties that were interested in renting it out. In the email, the Tenant claims that she had the wrong email address for the Landlord.

The Landlord testified that this was the first time she had learnt that the Tenant was ending the fixed term tenancy. The Landlord disputed the Tenant's claim that she had notified her a month earlier than the March 29, 2015 e-mail. This is because the Landlord and Tenant had been conversing by email in November 2014 about a key issue. The Landlord also submitted that the Tenant had her telephone contact details and service address which were documented on the tenancy agreement.

The Landlord testified that she informed the Tenant that she could not break the fixed term tenancy and needed the Landlord's written consent to sublet the rental unit. The Landlord informed the Tenant that she had hired a property management company on March 30, 2015 to find a new Tenant to mitigate the losses resulting from the breakage of the fixed term tenancy.

The Landlord informed the Tenant that she was still responsible for paying April 2015 rent until the rental unit could be re-rented out. However, the Landlord testified that the Tenant vacated the rental unit on April 2, 2015 and her postdated rent cheque for April 2015 rent was returned for the reason of non-sufficient funds. The Landlord provided a copy of the returned cheque into evidence. The Landlord testified that the Tenant failed to appear for the move out condition inspection which was scheduled to take place on April 2, 2015. Therefore, it was completed in the absence of the Tenant. The CIR was provided into evidence.

The Landlord testified that the property management company she employed managed to find a renter to take the rental unit for April 26, 2015. The Landlord explained that the new renter paid a prorated amount of \$250.00 for the April 2015 rent. Therefore, the Landlord now seeks to recover the remaining loss of April 1 to April 26, 2015 rent in the amount of **\$1,250.00** (\$1,500 - \$250.00). The Landlord testified that the Tenant provided her forwarding address in an email to the Landlord's agent on April 7, 2015. The Landlord made the Application on April 10, 2015.

The Landlord provided a copy of the contract she entered into with the property management company into evidence. The contract shows that the fee for finding a new renter is 30% of the first month's rent which the Landlord had to pay. As a result, the Landlord now seeks to recover this loss from the Tenant in the amount of **\$450.00** (\$1,500.00 x 0.30).

The Landlord testified that at the end of the tenancy, the Tenant failed to clean the carpets and the linoleum in the rental unit. The Tenant also failed to clean the kitchen cupboards and made a poor attempt to repair holes in the walls of the bedrooms. The Landlord referred to the move in CIR and the move out CIR to evidence the damages. The Landlord provided an estimate from a company in the amount of **\$280.00** for the cleaning testified to. This was provided into evidence and shows a breakdown of the charges. The total amount the Landlord seeks to claim from the Tenant is **\$1,980.00** (\$1,250.00 + \$450.00 + \$280.00).

Analysis

Although the Act does not provide that a forwarding address be provided by email, I find the Landlord received the Tenant's forwarding address on April 7, 2015. The Landlord made the Application to keep the Tenant's security deposit on April 10, 2015. Therefore, I find the Landlord made the Application within the 15 day time limit stipulated by Section 38(1) of the Act. I have carefully considered the undisputed affirmed testimony

and the documentary evidence of the Landlord in this decision based on the balance of probabilities.

In relation to the Landlord's claim for unpaid rent, a fixed term tenancy is designed to ensure that parties adhere to the agreed time period of occupancy. Section 45(2) (b) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is **not** earlier than the date specified in the tenancy agreement as the end of the fixed term.

As a result, I find that the Tenant failed to abide with the terms of the tenancy agreement and the requirements of the Act in relation to the fixed term tenancy and ended it prematurely before it was due to expire on November 15, 2015. This is a fundamental breach of the agreement and the Act. I find the Landlord attempted to mitigate loss, as required by Section 7(2) of the Act, by employing a property management company to locate a renter at the earliest possible time. I find that the Landlord did take reasonable steps to mitigate this loss. Therefore the Landlord is entitled to the prorated loss incurred in the amount of **\$1,250.00**.

I find that had the management company not located a renter for the end of April 2015, the losses faced by the Tenant may have been more. Accordingly, I find the Tenant should also be liable for the cost of the Landlord having to find a new renter which was done more efficiently and quickly by the property management company. The Landlord provided evidence to verify this loss and I find the Landlord is awarded **\$450.00** in this respect.

In relation to the Landlord's claim for lack of cleaning and damages to the rental suite, Section 37(2) (a) of the Act requires a tenant to leave the rental suite reasonably clean and undamaged at the end of the tenancy. In addition, Section 21 of the Residential Tenancy Regulation states that a CIR can be used as evidence of the state of repair and condition of the rental suite, unless a party has a preponderance of evidence to the contrary.

I accept the Landlord's undisputed evidence that the Tenant failed to clean the rental suite and leave it undamaged at the end of the tenancy. The CIR indicates the damage testified to and the Tenant failed to provide a preponderance of evidence to the contrary. Therefore, I find the Landlord is to be awarded **\$280.00** for this breach of the Act. Therefore, I award the Landlord a total of **\$1,980.00** (\$1,250.00 + \$450.00 + \$280.00).

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$2,030.00**.

As the Landlord already holds **\$1,500.00** in the Tenant's Deposits, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining balance of **\$530.00**. Copies of this order are attached to the Landlord's copy of this decision. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment in accordance with the Landlord's instructions.

Conclusion

The Tenant broken the fixed term tenancy and failed to leave the rental suite reasonably clean and undamaged. Therefore, the Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the remaining amount of \$530.00.

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: September 15, 2015

Residential Tenancy Branch

