



Dispute Resolution Services

Page: 1

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 a Summons to Testify. I dismissed the tenant's application for an adjournment as he failed to provide a satisfactory explanation for his delays in obtaining his documentary evidence. 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 where the tenant resides on April 16, 2015. 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 written tenancy agreement that provided that the tenancy would start on May 22, 2014, end on April 30, 2015 and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$1150 per month payable in advance

on the first day of each month. The tenant paid a security deposit of \$575 at the start of the tenancy.

The tenant testified he experienced a break and entering into his rental unit in late August in which many of his belongings were stolen. On March 25, 2015 the tenant experienced another break in. The tenant testified he felt unsafe in his rental unit as the landlord failed to improve the rental building's safety. The tenant On March 30, 2015 the tenant gave the landlord written notice that he was vacating the rental unit effective April 4, 2015.

Monetary Order and Cost of Filing fee

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

- a. The landlord claims the sum of \$1150 for lost rent for the month of April. Section 45(3) of the Residential Tenancy Act 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.

I determined the tenant cannot rely on this section even if the landlord failed to make the rental property safe as the tenant has not given the landlord written notice of he failure and a reasonable period to correct the situation.

However, section 7(2) of the Residential Tenancy Act provides as follows:

Liability for not complying with this Act or a tenancy agreement

- 7** (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.

The landlord failed to present proof of its efforts to re-rent the rental unit. There is no evidence as to when and how the landlord advertised. The landlord testified he had problems renting the rental unit but acknowledged they were asking for a higher rent

than what was paid by the tenant. As a result I determined the landlord is entitled to ½ months rent or the sum of \$575.

- b. I dismissed the landlord's claim of \$200 for the cost of cleaning as the landlord failed to present sufficient evidence to establish this claim.
- c. I determined the landlord is entitled to \$150 for an outstanding parking charge.

In summary I determined the landlord has established a monetary claim against the tenant in the sum of \$ 725 plus the \$50 filing fee for a total of \$775.

Security Deposit

I determined the security deposit plus interest totals the sum of 575. 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 \$200.

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: September 18, 2015

Residential Tenancy Branch

