



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Sections 7, 44, 45 and 67 for rental loss and other damages due to the breach of a fixed term lease;
- b) Compensation for cleaning costs and NSF fees;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenant agreed the Application for Dispute Resolution by registered mail. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant had a fixed term lease expiring March 30, 2015. The tenant vacated before the end of the fixed term. Is the landlord now entitled to a Monetary Order for rental loss, other costs and filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on September 22, 2014 and signed a fixed term lease for six months and one day expiring March 30, 2015, a security deposit of \$1085 was paid and rent was \$2175 a month. It is undisputed that the tenant vacated in January 2015 but paid the rent for January and February 2015. He now believes that he was not responsible for that as he gave 30 days notice to end his tenancy when he knew he had to move.

The landlord was able to re-rent through an agent on March 13, 2015. The landlord claims as follows:

\$845 rental loss March 1-13.

\$399 realtor fee for re-renting; the realtor usually charges half of one month's rent but gave the landlord a discount as he had rented for him before.

\$177.50 for cleaning the carpet

\$14 for two \$7 NSF charges.

The landlord supplied all the invoices to support his claim.

The tenant said he should not be responsible for costs of cleaning carpets as they were clean when he moved. He disagreed with his responsibility for rent. The landlord pointed to the tenancy agreement signed by the tenant in which he agreed to clean carpets at move-out; the landlord said that carpets might look clean but photos do not show bacteria etc. that accumulates with use, especially from small children.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

The onus is on the applicant to prove on a balance of probabilities their claim. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find as fact that the tenant violated the fixed term tenancy agreement by vacating before the end of the fixed term. Although the tenant contended he gave 30 days notice, I find section 45(2) of the *Act* states a fixed term tenancy may be ended on a date (2) (b) that is not earlier than the date specified as the end of the fixed term which in this case was March 30, 2015. Therefore, any notice to end tenancy given by the tenant would not be effective until March 30, 2015. Through breach of this lease, I find the landlord suffered rental loss from March 1-13 when he mitigated his loss and re-rented. I find he collected rent for March in the amount of \$1300. I find the tenant liable to reimburse the landlord for the rental loss of \$845 for March 2015.

I find the landlord also entitled to recover his costs of \$399 for re-renting through an agent before the end of the fixed term.

Although the tenant contended the carpets looked clean, I find the addendum in the agreement which he signed states he must have the carpets professionally steam cleaned at the end of the tenancy. I find the landlord entitled to recover \$177.50 as invoiced. I find the landlord also entitled to recover his bank charges of \$14 for the two NSF cheques supplied by the tenant.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Rental loss March 2015	845.00
Agent fees to re-rent	399.00
Carpet cleaning	177.50
NSF fees	14.00
Filing fee	50.00
Less security deposit (no interest 2014-15)	-1085.00
Total Monetary Order to landlord	400.50

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 02, 2015

Residential Tenancy Branch

