



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Select Real Estate Property Management Division
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord.

The landlord provided documentary evidence to confirm the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on April 30, 2015 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for overholding; for lost revenue; repairs to and cleaning of the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord has submitted into evidence a copy of a tenancy agreement signed by the parties on December 30, 2013 for a 6 month fixed term tenancy beginning on January 1, 2014 that converted to a month to month tenancy for a monthly rent of \$1,300.00 due on the 1st of each month with a security deposit of \$650.00 paid.

The landlord also submitted a copy of an Order of Possession granted on March 10, 2015 ordering the tenant to deliver full and peaceable vacant possession and occupation of the rental unit no later than March 31, 2015.

The landlord submitted that the tenant failed to vacate the rental unit until April 11, 2015 and as a result the landlord seeks \$50.00 per day for 10 days of overholding for a total of \$500.00. Clause 8 (g) of the tenancy agreement stipulates that should the tenant fail to vacate the rental unit at the end of the tenancy the landlord will charge a per diem rate of \$50.00.

The landlord submitted they had arranged for new tenants to move into the rental unit but when the unit was not available because the tenant was overholding and the condition of the rental unit after the tenant vacated the new tenants chose not to move into the rental unit. The landlord seeks \$1,300.00 in lost revenue for the month of April 2015.

The landlord has submitted into evidence a condition inspection report recording the condition of the rental unit at the start and end of the tenancy; photographs of the condition of the rental unit and residential property; and receipts for work completed for repairing and cleaning the property and for the replacement of damaged items such as blinds; closet doors; mirror; lights; a thermostat cover; and shutters.

The landlord seeks the following amounts:

Description	Amount
Replacement items	\$790.00
Repair materials	\$402.91
Interior painting	\$2,100.00
Cleaning	\$240.00
Garbage removal	\$354.17
Total	\$3,887.08

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 57 of the *Act* defines an overholding tenant as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. Section 57(3) states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy.

Based on the landlord's undisputed evidence and testimony I find the landlord has established the tenancy ended on March 31, 2015 and the tenant failed to vacate the rental unit until April 11, 2015. I am satisfied the tenancy agreement included a specific clause outlining the per diem amount to be charged in such a circumstance to be \$50.00.

Therefore, I find the landlord is entitled to the \$500.00 claim for overholding.

In addition, I find, based on the landlord's undisputed testimony and evidence, that the landlord suffered a loss of revenue in the amount of \$1,300.00 as a result of the tenant's overholding and the condition of the rental unit.

However, as I have found the landlord is entitled to \$500.00 for overholding for the period of April 1, 2015 to April 11, 2015 I find the landlord has been compensated for a portion of that lost revenue. Therefore, while I find the landlord is entitled to compensation for lost revenue I reduce the amount of that loss to \$800.00.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

As to the landlord's claim for repairs; cleaning and replacement of damaged items, I find based on the undisputed documentary evidence submitted by the landlord I find the landlord has established the tenant has failed to comply with the requirements outlined in Section 37. I also find the landlord has established they have suffered a loss as a result and that the value of that loss is \$3,887.08 as claimed.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$5,287.08** comprised of \$500.00 overholding; \$800.00 lost revenue; \$3,887.08 for repairs and cleaning; and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$650.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$4,637.08**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: October 06, 2015

Residential Tenancy Branch

