



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNDC, OPB

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for the cost of utilities, loss of income and advertising.

The landlord testified that she served the tenant with the notice of hearing and evidence package by registered mail on May 22, 2015, to the forwarding address provided by the tenant. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

At the start of the hearing, the landlord informed me that the tenancy had ended and that she had possession of the rental unit. Therefore the landlord's application for an order of possession was moot and accordingly dismissed. The landlord also indicated that she would like to retain the security deposit in satisfaction of her claim. Even though the landlord did not check the appropriate box on her application, her application summary refers to her intention to retain the security deposit.

Issues to be decided

Is the landlord entitled to the cost of utilities, loss of income and advertising? Is the landlord entitled to retain the security deposit in full satisfaction of her monetary claim?

Background and Evidence

The landlord testified that the tenancy started in August 2014 for a fixed term of one year. Prior to moving in the tenant paid a security deposit of \$700.00. The rent was \$1,400.00 payable on the first of each month and did not include utilities. The landlord's advertisement stated that utilities were negotiable. The landlord stated that at the time that they were signing the lease, she had a discussion with the tenant. During that

discussion, the landlord agreed to cover the cost of utilities if the tenant agreed to sign a one year fixed term lease.

The landlord stated that the tenant agreed to sign the fixed term lease and the tenancy started with the landlord covering the cost of utilities on behalf of the tenant.

In April 2015, the tenant informed the landlord that she would be moving out at the end of April. The landlord wrote a letter to the tenant on April 22, 2015 reminding her of the verbal agreement they had made regarding the one year fixed term. The landlord stated in the letter that as of April 01, 2015, she had paid a total of \$684.39 on behalf of the tenant for the cost of utilities, and since the tenant was ending the tenancy prior to the end date of the fixed term, the landlord was requesting to be compensated for the cost of utilities incurred. The landlord filed a copy of the letter and utility bills.

The landlord stated that she started looking for a tenant immediately after the tenant gave notice to end the tenancy and she was able to find one for May 05, 2015. The landlord testified that she lost rental income for five days in the amount of \$241.00 and also spent \$5.00 for advertising the vacancy. The landlord stated that she had to hire a steam cleaner for \$45.00 as the tenant had not cleaned the carpet.

Overall the landlord is claiming the following:

1.	Cost of utilities	\$684.39
2.	Loss of income	\$241.00
3.	Advertising	\$5.00
4.	Carpet cleaning	\$45.00
	Total	\$975.39

The landlord stated that even though her total claim is in excess of the security deposit of \$700.00, she would be happy to retain the deposit in full and final settlement of all claims against the tenant.

Analysis

Based on the undisputed testimony and documentary evidence of the landlord, I accept the landlord's testimony in respect of the claim.

The landlord testified that her advertisement at the time this tenant entered into the tenancy agreement indicated that the utilities were negotiable. Even though the landlord did not have a written agreement regarding the payment of utilities, I find on a balance of probabilities that it is more likely than not the tenant agreed to enter into a one year fixed term if the landlord paid the utilities.

Since the tenant breached the agreement by ending the tenancy early, I find that she must bear the cost of her utility use.

Also since the tenant breached this agreement, the landlord is entitled to damages awarded in an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

In this case the landlord attempted to mitigate her losses by advertising the availability of the rental unit. A new tenant was found for May 05, 2015. Therefore, I find that the landlord is entitled to the loss of income for five days and for the cost of advertising.

Residential Tenancy Policy Guideline#1 addresses the responsibility for the residential premises. With regard to carpets, the guideline states: *Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.*

This tenancy started in August 2014 and ended in April 2015. Since the length of the tenancy was less than one year, I find that the tenant was not required to shampoo or steam clean the carpets and therefore the landlord's claim for \$45.00 is dismissed.

Overall the landlord has established a claim for a total of \$930.39. The landlord agreed to accept the deposit in full settlement of her claim. Accordingly, I order the landlord to retain the security deposit of \$700.00 in full settlement of all claims against the tenant.

Conclusion

The landlord may retain the security deposit of \$700.00.

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: October 16, 2015

Residential Tenancy Branch