



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNR, MNSD, MNDC, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for loss of income, agent's fees, cleaning, cost of repairs to walls, garage door, back yard and the lawn. The landlord also applied for the recovery of the filing fee and to retain the security deposit in partial satisfaction of her claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant acknowledged receipt of evidence submitted by the landlord. Both parties gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, agent's fees, cost of repairs and for the filing fee?

Background and Evidence

The tenancy started on July 01, 2014 for a fixed term of one year. The monthly rent was \$2,995.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$1,497.50.

The tenant stated that in April 2015, two months prior to the end of the fixed term, the landlord pressured him into signing another lease and he did so on April 30, 2015. A copy of the lease was filed into evidence.

By signing the second lease, the parties entered into another fixed term tenancy which would start on July 01, 2015 and end on June 30, 2016.

On June 03, 2015, the tenant gave the landlord notice to end the tenancy effective July 31, 2015. The landlord stated that she advertised the availability of the unit immediately and hired an agent to find a tenant. A tenant was found for August 15, 2015. The landlord is claiming loss of income for the first half of August and the cost of the services of the agent.

The landlord is also claiming for the cost of general cleaning, carpet cleaning and wall repair which the tenant agreed to cover.

The landlord stated that the tenant would leave the garage door slightly open for ventilation and at the end of tenancy the landlord had to hire someone to fix the door, because it would not fully close. The tenant denied having cause damage to the door.

The landlord stated that the backyard was full of weeds and needed cleaning. The tenant stated that the back yard consisted of a two car width driveway bordered by 6 foot and 9 foot wide strips which were covered with gravel. The tenant stated that he kept the backyard reasonably clean and tidy. The landlord stated that she incurred an expense of \$325.00 to clean up the yard and is claiming this amount from the tenant.

The landlord is also claiming for the cost to repair the front yard that she said was full of weeds with portions of the grass picked off the ground by birds. The tenant stated that he mowed the lawn regularly and did not agree that he owed the landlord the cost of lawn repair. The landlord filed an estimate of the cost to repair the lawn.

The landlord is claiming the following:

1.	Loss of income	\$1,497.50
2.	Agent's fees	\$1,575.00
3.	Cleaning	\$150.00
4.	Carpet cleaning	\$33.60
5.	Wall repair	\$220.00
6.	Garage door repair	\$89.25
7.	Back yard cleaning	\$325.00
8.	Lawn repair	\$2,100.00
9.	Filing fee	\$50.00
	Total	\$6,040.35

Analysis

1. Loss of income - \$1,497.50

Section 45(2) of the *Residential Tenancy 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:

- (a) Is not earlier than one month after the date the landlord receives the notice
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

In this case, the tenant was in a fixed term tenancy ending June 30, 2015. Two months prior to the end of the fixed term, the landlord entered into a second fixed term tenancy. Before the start of the second fixed term, the tenant gave notice to end tenancy. The tenant gave notice on June 03, 2015 with an effective date of July 31, 2015.

Based on the testimony of both parties, I find that the tenant gave notice to end tenancy during the term of the first fixed tenancy and prior to the start of the second fixed term tenancy. The tenancy agreement in effect at the time the tenant gave notice to end tenancy, required the tenant to move out on June 30, 2015. The tenant moved out a month later and therefore I find that the tenant overstayed because he continued to occupy the rental unit after the fixed term tenancy had ended.

Pursuant to section 57(3) of the *Residential Tenancy Act*, the landlord may claim compensation from an over holding tenant for any period that the over holding tenant occupies the rental unit after the tenancy has ended. In this case I find that the tenant was over holding for the month of July 2015. However the landlord agreed that the tenant had paid rent for this month and therefore the tenant does not owe rent.

Since the tenant had given adequate notice to the landlord to end the tenancy and that the new tenancy agreement was not in effect at the time the tenant gave notice to end tenancy, I find that the landlord is not entitled to any loss of income she may have suffered. Accordingly the landlord's claim for \$1, 497.50 is dismissed.

2. Agent's fees - \$1,575.00

The tenancy agreement did not have a provision for the tenant to cover the expenses incurred by the landlord for the services of an agent. I find that the cost of agent services is the landlord's cost of doing business. Accordingly, the landlord's claim for \$1,575.00 is dismissed.

3. Cleaning - \$150.00
4. Carpet cleaning - \$33.60
5. Wall repair - \$220.00

The tenant agreed to cover the above costs. Therefore I award the landlord her claim for items 3, 4 and 5.

6. Garage door repair - \$89.25

Based on the testimony of both parties, I find that the damage to the garage door was minimal. On a balance of probabilities, I find that it is more likely than not that this damage was a result of normal wear and tear and not negligence on the part of the tenant. Therefore I find that the tenant is not responsible for the cost of repairs.

7. Back yard cleaning - \$325.00

The tenant stated that the back yard consisted of a driveway bordered by gravel strips. The tenant stated that he routinely pulled weeds and left the back yard in a reasonable condition. The landlord has filed a photograph showing some weeds and an estimate for the cost of cleanup of the backyard and repair of the lawn.

The landlord drew my attention to a term in the addendum that states that the tenant must maintain and take care of the lawn and back yard.

Residential Tenancy Policy Guideline #1 states that the tenant is responsible for routine yard maintenance which includes cutting grass and clearing snow. The tenant is also responsible for a reasonable amount of weeding

Based on the testimony of both parties and the photograph filed by the landlord, I find that the tenant left the back yard in a fairly reasonable condition and therefore I further find that the tenant is not responsible for the cost of cleaning the backyard.

8. Lawn repair - \$2,100.00

The landlord has filed an estimate in this amount. The landlord has not filed a photograph to indicate the condition the lawn was left in. The landlord stated that the lawn was full of weeds and that portions of grass were missing due to the activity of the birds. The tenant stated that he mowed the lawn regularly.

As mentioned above, the tenant is responsible for routine maintenance which includes cutting the grass and a reasonable amount of weeding. In the absence of photographs I am unable to determine the condition of the yard.

For the above reasons, I find that the landlord must bear the cost of fixing the yard.

9. Filing fee- #50.00

The landlord has proven a portion of her claim and therefore I award her the recovery of the filing fee.

Overall the landlord has established the following claim:

1.	Loss of income	\$0.00
2.	Agent's fees	\$0.00
3.	Cleaning	\$150.00
4.	Carpet cleaning	\$33.60
5.	Wall repair	\$220.00
6.	Garage door repair	\$0.00
7.	Back yard cleaning	\$0.00
8.	Lawn repair	\$0.00
9.	Filing fee	\$50.00
	Total	\$453.60

Overall the landlord has established a claim for \$453.60. I order that the landlord retain this amount from the security deposit and return the balance of \$1,043.90 to the tenant.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of the monetary claim. Because the landlord has established a claim which is less than the amount of the security deposit (\$1,497.50), it is appropriate that I order the return of the balance of the tenant's security deposit.

I so order and I grant the tenant a monetary order in the amount of \$1,043.90. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,043.90**.

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: February 04, 2016

Residential Tenancy Branch

