



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacioli Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: MNR, MNDC, MNSD, FF
Tenant: MNSD, MNDC

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking monetary orders.

The hearing was originally convened on January 4, 2016 via teleconference and was attended by the landlord and the tenant. The hearing was adjourned as per the Interim Decision of January 4, 2016. The hearing was reconvened on February 29, 2016 via teleconference and was also attended by the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; cleaning; lock changes and administration costs; 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 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for double the amount of the security deposit; other compensation; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on May 8, 2015 for an 11 month 15 day fixed term tenancy beginning on May 15, 2015 for a monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 paid. The tenancy ended by July 2, 2015 when a move out condition inspection was completed. Both parties signed the Condition Inspection Report on July 2, 2015.

The landlord submitted the tenant chose to vacate the rental unit prior to the end of the fixed term and sought compensation in the amount of \$600.00 for lost revenue for the period of July 1, 2015 and July 15, 2015.

The landlord testified that the rental was advertised as soon as possible after receiving notification of the tenant's intent to vacate the rental unit. He acknowledged that when it was first advertised online it did state it was for over 50 olds only but that this was an error that was corrected as soon as possible. The unit was re-rented effective July 15, 2015.

The landlord also seeks compensation for a "tenant placement fee" in the amount of \$630.00. The landlord stated that his previous property manager had failed at properly screening potential tenants and managing his property. As a result, the landlord has fired this property manager. The landlord stated he now has a new property manager and will hire a real estate company for all future tenant placements.

The tenant submitted that when she moved into the rental unit there were a number of problems. The tenant submitted several emails between herself and the previous property manager regarding a number of issues including confirming the carpets were cleaned just after the tenant moved in; problems with the kitchen counter; and problems with the fridge.

The tenant submitted copy of a letter to the landlord dated May 27, 2015 but signed by the tenant on May 29, 2015. The letter advised the landlord that she will be moving out of the rental unit on June, 2015. The tenant writes in the letter her reasons for wanting to end the tenancy.

Specifically the tenant states that her reason for ending the tenancy is because of the damage to the kitchen counter. In this letter the tenant refers to an email sent to the landlord on May 15, 2015 in which she states that if the counter wasn't fixed she would not be able to move into the rental unit. The tenant did move in to the rental unit.

The tenant submitted that she was advised by the Residential Tenancy Branch that she should not move out right away but rather that she should give the landlord a month notice that she was going to move out as a show of good faith. As such, the tenant does not believe she should have to pay rent for any part of July 2015.

Even if she is obligated to pay rent for part of July 2015 she submitted that the landlord waited too long to advertise the availability of the rental unit and that he put an age restriction on the advertisement thus impeding his ability to re-rent the unit.

The tenant seeks compensation from the landlord in the amount of \$50.00 for the loss of food stored in her refrigerator that did not work properly. The tenant did not provide a list of food items lost or their costs for replacement.

The landlord also seeks compensation in the amount of \$126.00 for carpet cleaning. The landlord testified that there were many stains on the carpet prior to the start of the new tenancy and he had to have the carpets clean.

The Condition Inspection Report submitted by both the landlord and the tenant does not indicate and carpet stains at the time of the move out condition inspection. I note there is also a notation on the Report that says: "no damage other than move-in condition" [reproduced as written].

The landlord seeks compensation for the cost of Canada Post and Express Post in the amount of \$23.36 for costs incurred pursuing this claim.

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 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy 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.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

In the absence of being present when the tenant spoke to an Information Officer at the Residential Tenancy Branch it is impossible for me to determine why an Information Officer would provide such advice to a tenant who was in a fixed term tenancy. A tenant in a fixed term tenancy cannot end such a tenancy until the end of the fixed term, unless the landlord has failed to comply with a material term of the tenancy agreement pursuant to Section 45(3) of the *Act*.

If in fact the tenant wanted to end the tenancy for a breach of a material term of the tenancy she must first provide written notice to the landlord to advise him of the breach and why the tenant believes that it is a material term of the tenancy; provide the landlord then sufficient time to rectify the breach and advising him that if it is not rectified the tenant will vacate the rental unit.

Based on the tenant's letter of May 27, 2015, signed and dated by the tenant on May 29, 2015 I find that the tenant did not provide the landlord with a notice of a breach of a material term. While the tenant refers to an email of May 15, 2015 I note that the tenant had not moved in to the rental unit at that time and she was advising of conditions she wanted repaired prior to moving into the rental. I find that is not the same as providing the landlord with notice of a breach of a material term.

As I have found that the tenant had not ended the tenancy in accordance with Section 45(3) I find the tenant is responsible for the payment of rent until the end of the fixed term of the tenancy subject to the landlord's obligation to mitigate any damages or losses.

Despite the tenant's submissions regarding the inadequacy of the landlord's attempts to mitigate losses of revenue, I find the landlord took reasonable steps to re-rent the unit as soon as possible. I find as a result the landlord has reduced the potential loss of revenue from \$12,000.00 to \$600.00. I am satisfied with the landlord's attempts to mitigate his losses.

I find the landlord has established he was unable to re-rent the unit until July 15, 2015 and is therefore entitled to recover ½ month's rent from the tenant in the amount of \$600.00.

In regard to the landlord's claim for compensation I find that the landlord has chosen to access tenant applications for tenancy by hiring a real estate company as a result of the failure of his previous manager's actions and not specifically as a result of this tenancy. Furthermore, based on the landlord's testimony, I find that this method of finding a new tenant will be the landlord's standard process for finding tenants regardless of the circumstances and as such is a cost of doing business.

For these reasons I dismiss the portion of the landlord's claim for \$630.00 for a tenant placement fee.

Section 32(1) of the *Act* requires the landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law and having regard to the age, character and location of the rental unit make it suitable for occupation by a tenant.

While I accept that the refrigerator in the rental unit was not working properly and that the tenant had reported this to the property manager the tenant has provided no evidence of what foods she lost or what she had to discard as a result. However, I find

a claim of \$50.00 to be a reasonable amount for losses of what might typically be in a person's fridge.

Based on the submissions of both parties, I find the landlord failed to comply with the requirements under Section 32(1) when he failed to repair the fridge in a timely manner to prevent losses to the tenant. As such, I find the tenant is entitled to her claim of \$50.00.

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.

In regard to the landlord's claim for carpet cleaning, I find the landlord has failed to provide any evidence that there was a need for carpet cleaning at the end of the tenancy. I find that the carpets had been cleaned at the start of the tenancy and that the Condition Inspection Report shows no indication of staining on the carpet as agreed to by the tenant and the landlord's agent.

Therefore, I dismiss this portion of the landlord's claim in the amount of \$126.00.

Additionally, in regard to the landlord's claim for the costs of Canada Post and Express Post, I find the *Act* provides no authority for the recovery of the costs in pursuit of a claim against the tenant. I dismiss the portion of the landlord's claim for \$23.36.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the Condition Inspection Report I find the tenant provided the landlord with her forwarding address on July 2, 2015 and as such the landlord had until July 17, 2015 to file his Application for Dispute Resolution seeking to claim against the deposit. As the landlord submitted his Application on July 13, 2015 I find the landlord has complied with Section 38(1) and the tenant is not entitled to double the amount of the security deposit.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$625.00** comprised of \$600.00 rent owed and \$25.00 of the \$50.00 fee paid by the landlord for this application, as he was only partially successful.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$75.00** comprised of \$50.00 compensation and \$25.00 of the \$50.00 fee paid by the tenant for this application, as she was only partially successful.

I order the landlord may deduct the amount of the tenant's above noted award of \$75.00 and security deposit held in the amount of \$600.00 in satisfaction of this claim leaving a balance owing to the tenant. I grant a monetary order in the amount of **\$50.00**. This order must be served on the landlord. If the landlord fails to comply with this order the tenant 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: March 09, 2016

Residential Tenancy Branch