



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for alleged damage to the rental unit, compensation under the Residential Tenancy Act (the "Act"), and the tenancy agreement, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Agent for the Landlord appeared at the hearing.

The Agent testified and provided evidence that the Notice of Hearing and the Landlord's Application were mailed to the Tenant by registered mail on October 15, 2015. The Agent testified he checked the Canada Post tracking information and the Tenant signed for the mail on October 19, 2015. Furthermore, under section 90 of the Act, the Tenant is deemed served five days after mailing. Therefore, I find the Tenant has been duly served in accordance with the Act.

The hearing process was explained and the Agent was asked if they had any questions. The Agent provided affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

On March 31, 2015, the parties signed a written tenancy agreement. The tenancy began on April 1, 2015, and had an initial fixed term of one year to March 31, 2016. The rent was \$1,550.00 per month, and the Tenant paid a security deposit of \$775.00 on March 31, 2015.

On or about the September 3, 2015, the Landlord's Agent inspected the rental unit after having given the Tenant a notice of entry on or about August 27, 2015. The Agent discovered the Tenant had a pet dog. Both the tenancy agreement and its addendum set out that there were no pets allowed in the rental unit without the written consent of the Landlord. The Landlord informed the Agent, and the Agent informed the Tenant that no pets were allowed in the rental unit. Shortly after this the Tenant gave the Landlord a notice she was moving out of the rental unit, in breach of the fixed term tenancy agreement.

The Tenant vacated the property on September 30, 2015. At the time of the outgoing condition inspection report the Tenant agreed to the Landlord deducting \$300.00 from the security deposit for cleaning of the rental unit.

The Agent testified and submitted proof that the Landlord began advertising the rental unit on October 1, 2015, the day after the Tenant vacated, and re-rented the property for a tenancy that started on November 15, 2015.

The Landlord is claiming for loss of rent for one and a half months, in the amount of **\$2,325.00**. The Landlord's position is that the Tenant breached the Act and tenancy agreement by ending a fixed term tenancy improperly.

The Landlord was also claiming for Agent's fees in the amount of \$775.00 and for alleged damages to the laminate floor.

During the course of the hearing the Agent explained they were no longer claiming for damage to the floor and withdrew that claim.

Analysis

Based on the above, the undisputed evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenant has breached section 45 of the Act by breaching a fixed term tenancy without proper authority to do so.

Under section 45(2) of the Act, the Tenant was not allowed to end a fixed term tenancy without an order from an Arbitrator to end the tenancy, or without other authority under the Act to end it.

I find there was no evidence that the Tenant had authority under the Act to end the fixed term tenancy early. I find the Tenant breached the tenancy agreement and section 45 of the Act by ending the fixed term tenancy before it ended without authority to do so.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord has established that the Tenant breached the Act and tenancy agreement, and are entitled to monetary compensation for the breach. I find the Landlord has established a total monetary claim of **\$2,375.00** comprised of \$2,325.00 in loss of rent for one and a half months and the \$50.00 fee paid for this application.

I dismiss the Landlord's request for the cost of having an Agent re-rent the property. I find the Act does not allow me to compensate the Landlord for using an Agent. Had the Landlord wanted to recover the cost of re-renting after a breach of the fixed term, the Landlord may have incorporated a liquidated damages clause in the tenancy agreement. The Agent argued that section 72 of the Act allows the recovery of a fee; however, I find this portion of the Act refers to a filing fee charged for an Application, not a fee for using an Agent.

I find there is a balance due on the security deposit of \$475.00, after deducting the \$300.00 the Tenant agreed to for cleaning costs in the outgoing condition inspection report.

I order that the Landlord may retain the balance of the deposit of **\$475.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,900.00**. ($\$2,375 - \$475.00 = \$1,900.00$)

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant ended a fixed term agreement without authority to do so under the Act or tenancy agreement.

The Landlord is entitled to one and a half months of lost rent and may keep the balance of the security deposit in partial satisfaction of the claim. The Tenant owes the Landlord **\$1,900.00**. The Landlord has a monetary order in that amount which must be served on the Tenant and may be enforced in Provincial Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 25, 2016

Residential Tenancy Branch