



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for liquidated damages, loss of income, unpaid utilities and to recover the costs of cleaning and repair to the rental unit and the filing fee. The landlord has also applied for the return of double the security deposit that he had paid to the tenant in compliance with a monetary order granted to the tenant on August 12, 2015.

The landlord testified that on October 07, 2015, he served the tenant with the notice of hearing by registered mail. The landlord filed a copy of the tracking history which indicates that the tenant picked up and signed for the package on October 08, 2015.

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.

In his evidence package, the landlord referred to a prior decision to resolve a dispute between these two parties. The tenant had applied for the return of double the security deposit and for compensation. The hearing was scheduled for August 12, 2015. The landlord did not attend the hearing. In the absence of the landlord, the Arbitrator awarded the tenant the return of double the deposit plus the filing fee and dismissed the tenant's claim for compensation.

During this hearing the landlord also referred to his application for a review of the above mentioned decision. In a decision dated September 14, 2015, the landlord was denied a review hearing and the decision dated August 12, 2015 was upheld.

The landlord paid the tenant the amount of the award and filed a copy of the cheque that he paid to the tenant in the amount of \$1,046.00. The landlord is now claiming the return of this award on the grounds that the tenant did not pay a deposit.

Upon review of the decision by the reviewing Arbitrator, I find that the landlord has applied on the grounds of fraud committed by the tenant, but did not mention that the tenant had not paid a security deposit. In any event the return of the deposit has already been dealt with in the prior decision and this decision was upheld in a decision by the reviewing Arbitrator dated September 14, 2015. Accordingly, the landlord's claim for the return of the amount of the award to the tenant is dismissed.

In the decision dated August 12, 2015, the Arbitrator determined that the parties came to a mutual agreement to end the tenancy effective January 31, 2016.

Issues to be decided

Has the landlord established a claim for a monetary order for liquidated damages, loss of income, unpaid utilities, to recover the costs of cleaning and repair to the rental unit? .Is the landlord entitled to the filing fee?

Background and Evidence

The tenancy started on August 01, 2014 for a fixed term ending April 30, 2015. The monthly rent was \$1,000.00 payable on the first of each month. The tenant was required to pay an additional amount for utilities. The tenant's share as per the tenancy agreement was 40% of the entire bill.

Move in and move out inspections were conducted on August 31, 2014 and January 07, 2015 respectively. The landlord filed the inspection reports into evidence and the report shows that the unit was not cleaned at the end of the tenancy. Under the deductions section of the report, the landlord has claimed a total of \$806.02 as charges that the tenant is responsible for.

This amount includes \$225.00 for cleaning, \$255.00 for repairs and \$326.02 for unpaid utilities for a total of \$806.02. In an email dated January 17, 2015, the landlord has informed the tenant that he was able to get the cost to replace the broken trays in the refrigerator. He also says *"Please see the following total cost for all repairs, cleaning and pending hydro and utilities"*

Following the above sentence is a table outlining the breakdown of the costs that the landlord is expecting the tenant to pay. The final total is \$806.02 which is the same as the one recorded on the move out inspection report.

The landlord is making the following claim:

1.	Cleaning and repairs	\$787.50
2.	Replacement of refrigerator	\$599.99
3.	Hydro	\$235.62
4.	Water	\$140.58
5.	Liquidated damages	\$1,000.00
6.	Loss of income for February and March 2015	\$2,000.00
7.	Loss of income for half of April 2015	\$500.00
8.	Double deposit returned to tenant	\$1,046.00
9.	Filing fee	\$50.00
	Total	\$6,359.69

Analysis

Items #1 to #4 are claims that the landlord made during the move out inspection and are documented in the report as well as in an email sent by the landlord to the tenant. The total amount for these claims is \$806.02. The landlord has provided photographs and invoices to support his claim and therefore I award the landlord a total of \$806.02 for cleaning, repairs, replacement of refrigerator trays and unpaid utilities.

In the decision dated August 12, 2015, the Arbitrator determined that the tenancy ended by mutual agreement. Even though the landlord denied having entered into a mutual agreement with the tenant to end the tenancy, based on the decision dated August 12, 2015, the inspection reports and the email correspondence between the two parties after the tenancy ended, I find on a balance of probabilities that it is more likely than not that the tenancy ended pursuant to a mutual agreement between the parties.

Accordingly, since I have determined that the tenancy ended by mutual agreement, I find that the landlord is not entitled to his claim for liquidated damages or the loss of income he may have incurred after the tenancy ended.

Black's Law Dictionary defines *res judicata*, in part as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Because this issue of the the return of the deposit was a matter that has already been considered by an Arbitrator on August 12, 2015, I find that the principle of *res judicata* applies, meaning that the matter has already been decided and is therefore final and binding on the parties.

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

Overall the landlord has established a claim of \$856.02.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$856.02.**

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: April 15, 2016

Residential Tenancy Branch