



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$545 lease break fee and rental concession
- b. An order to retain the security deposit
- c. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant claims a monetary order in the sum of \$765.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other.

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the tenant is entitled to a monetary order and if so how much?
- e. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on October 1, 2015 and end on September 30, 2016. The tenancy agreement provided that the rent was \$925 per month payable in advance on the first day of each month. The tenant also had a rental concession of \$39 per month which reduced the rent to \$887 per month. The tenant paid a security deposit of \$462.50 at the start of the tenancy. The tenancy agreement also provided for a \$350 charge if the tenant broke the lease prior to the end of the 12 month period and a requirement that the tenant return a rent concession of \$39 per month for each month she had received the benefit.

The tenant(s) testified that she failed to recognize there was a problem with mice in her rental unit initially. The landlord has asked her if she was experiencing a mice problem but she had not experienced it. However, over time she began to hear them in the walls.

The landlord testified that the tenant first reported a mice problem to her on January 21, 2016. She had her maintenance employee check it out the next day with instructions to fill mouse holes along heaters in all rooms. Their records indicate the maintenance employee patched the heaters with steel wool, mesh wire and bond silicone. The pest control contractor was called in on January 25, 2016. His report indicates "Inspected the suite for mice. Signs of small activity in the kitchen/storage area. Placed bait boxes and traps strategically. Holes have already been filled by maintenance."

On January 28, 2016 the tenant gave landlord written notice as follows:

"Dear Management of MS at _____, I AT from unit _____ will be moving out Feb. 29, 2016 at 12:30 a.m. So this writing is my official notice to you. I have found a better place. Have a good day.

Signed _____

The landlord responded with a letter on the same date stating the tenant was obliged to pay a lease breaking charge of \$350 and rental concessions of (5 x \$39) of \$195 for a total of \$545.

The tenant testified she could still hear the mice in the walls and they were digging a hole out. She complained to the landlord on February 23, 2016. The landlord sent in a pest control contactor on February 25, 2016 with a request to please fill mouse holes again (mice eating through the foam). His report states that he checked all holes and filled them with steel wool and silicone. No sign of entry. Mice are inside their unit. As they don't do proper housekeeping.

On February 29, 2016 the tenant gave the landlord a letter that stated the following:

- She has been experiencing a mice and cockroach problem in her unit for five months.
- She informed the office and they sent someone over.
- A few days later the mice continued to run through her unit.
- As a pregnant mother with two sons she had to move to her parents' home.
- "I gave the office one month notice and had to pay \$550 for breaking the lease. I talked to a lawyer and he said it was unfair because I broke the contract with good reasons. I am asking back for \$462.50.

The tenant vacated the rental unit on February 29, 2016.

Landlord's Claim:

The Residential Tenancy Act provides that where a tenant enters into a fixed term tenancy agreement the tenant is obliged to pay the rent for the entire period of the fixed term subject to the tenant's right to end the tenancy early if the landlord breaches a material term of the tenancy agreement and the landlord's obligation to mitigate its loss.

Section 45(3) provides as follows:

45(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service 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.

I determined the tenant failed to prove the landlord breached a material term of the tenancy agreement. The tenant did not make a complaint until several months after she took possession. The landlord responded within one day of the tenant's complaint and filled the holes. The pest control contractor was called in a few days later and treated the problem. Further, the tenant failed to end the tenancy in a manner required by the Residential Tenancy Act. The tenant gave the landlord notice to end the tenancy on

January 28, 2016. The Notice states she had found a better place. It does not say the landlord breach a material term of the tenancy agreement. Further the Tenant's notice failed to give the landlord a reasonable opportunity to rectify the situation as required by the Act.. The letter of February 29, 2016 summarizes the situation and then asks for the return of the deposit. However, the tenant ended the tenancy by notice in her letter of January 28, 2016.

As a result I determine the landlord is entitled to recover the sum of \$350 for the tenant breaching the fixed term tenancy agreement as provided by the tenancy agreement. The amount is a genuine estimate of the loss to the landlord. The tenant breached the contract prior to the end of the fixed term.

In addition the landlord is entitled to \$195 for the rental concessions as provided in the tenancy agreement and rental incentive agreement..

Analysis - Monetary Order and Cost of Filing fee:

I granted the landlord a monetary order in the sum of \$545 plus the sum of \$100 in respect of the filing fee for a total of \$645.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$462.50. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$182.50.

Tenant's Claim:

The Application for Dispute Resolution filed by the tenant seeks a monetary order in the sum of \$765. She failed to identify her claim in the particulars and failed to file a Monetary Order Worksheet. At the hearing she testified she was claiming \$462.50 for the return of the security deposit and \$300 plus for the cost of moving and hassles of dealing with this situation.

With respect to each of the Tenant's claims I find as follows:

- a. I dismissed the Tenant's claim for the return of the security deposit. I determined the landlord was entitled to apply the security deposit to the claim established by the landlord. The landlord files its claim within 15 days of the end of the tenancy. The tenant failed to provide sufficient cause to establish the landlord is not entitled to apply the security deposit to the monetary order established by the landlord.

- b. I dismissed the Tenant's claim for the cost of moving and the hassles of dealing with the situation. The tenant's letter ending the tenancy at the end of January states she found a better place. The tenant breached the tenancy agreement when she moved during the fixed term. The landlord responded to the tenant's complaints of the mice problem quickly and appropriately once the tenant advised the landlord of the problem. Further, the tenant failed to present sufficient evidence to quantify her moving expenses.

Conclusion:

In summary I ordered that the landlord shall retain the security deposit of \$462.50. I further ordered that the Tenant pay to the landlord the sum of \$182.50. I dismissed tenant's application for a monetary order.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and 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: July 11, 2016

Residential Tenancy Branch