



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNR, MNSD

Introduction

This is an application brought by the Landlord requesting a Monetary Order in the amount of \$6765.00, and requesting recovery of the \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

The parties were both affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

The parties agree that the tenant moved into this rental unit on December 1, 2013 and paid a security deposit of \$850.00.

The parties also agree that there was a fixed term tenancy agreement in place with an expiry date of September 30, 2016.

The parties also agree that the tenant vacated the rental unit on June 30, 2016.

The landlord testified that, on the tenancy agreement, both the landlord and the tenant initialed an agreement to raise the rent from \$1800.00 to \$1850.00 per month starting in January of 2016; however the tenant failed to pay that increase for the months of January 2016 through June 2016 for a total of \$300.00. The landlord further stated that he did not give the tenant any notice of rent increase because it was already written on the lease.

The landlord further testified that the tenant had signed a fixed term tenancy agreement with an expiry date of September 30, 2016; however the tenant vacated the rental unit at the end of June 2016 thereby breaching the tenancy agreement. The landlord further states that although he attempted to re-rent the unit he was unable to do so and therefore lost the full rental revenue of \$1800.00 per month for the months of July 2016, August 2016, and September 2016, for a total of \$5550.00.

The landlord also testified that there was an agreement to allow the tenant to deduct \$170.00 per month from the rent as she was supplying her own cable and Internet; however the tenant canceled the cable Internet on June 20, 2016 and therefore he is asking for a prorated amount of \$75.00 since she was not having to pay for cable or Internet for the dates June 21, 2016 through June 30, 2016.

The landlord further testified that at the end of the tenancy the tenant left the rental unit in need of cleaning and carpet cleaning, and therefore he had to pay to have the rental unit cleaned, and the carpets.

The landlord further testified that there was damages left at the end of the tenancy that required repairs, at a cost of \$150.00.

The landlord further testified that there were 9 missing blind panels at the end of the tenancy and those also had to be replaced at a cost of \$90.00.

The landlord is therefore requesting a Monetary Order as follows:

\$50.00 a month rent increase not paid	\$300.00
Three months lost rental revenue	\$5550.00
Prorated cable/Internet reimbursement	\$75.00
Cleaning	\$300.00
Carpet cleaning	\$300.00
Maintenance/repairs	\$150.00
Nine missing blind panels	\$90.00
Filing fee	\$100.00

Total	\$6865.00
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The tenant testified that the landlord did not ask for the rent increase and she believed the rent had stayed at \$1800.00 per month.

The tenant further testified that her life circumstances changed, and her ex husband stop paying support payments, and therefore she informed the landlord that she would have to be moving and was looking for subsidized housing, and the landlord never told her that she could not do this or that she would owe rent to the end of the lease. She further stated that her financial position got so poor that she had to move in with her parents.

The tenant testified that she was allowed to deduct money off the rent but it was for cable, Internet and gas and electric utilities and she believes \$75.00 is high for prorated amount for nine days of canceling the cable and Internet.

The tenant further testified that when she moved into the rental unit, under the previous landlord, the rental unit was left in very poor condition and the landlord informed her that they would not have to clean when they moved out.

The tenant further testified that they caused no damage during the tenancy and that the carpet was in need of stretching when they moved into the rental unit and the blinds had missing panels when they moved into the rental unit. She further states that right on the moveout inspection report it states that nothing further is required.

In response to the tenants testimony the landlord stated that he did not dispute the tenants request to move out early as he felt he had no choice due to her financial position; however he never agreed that she would not be responsible for any lost rental revenue resulting from breaching the fixed term tenancy agreement.

Analysis

\$50.00 per month rent increase

Section 42 of the Residential Tenancy Act states:

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

According to the copy of the tenancy agreement provided by the landlord the rent had previously been increased on March of 2015 and therefore since the landlord can only raise the rent every 12 months, the landlord was not allowed to raise the rent before March of 2016. Further, as stated above, the landlord must give the tenant three months notice before the effective date of the rent increase, and the notice must be in the approved form. In this case the landlord has testified that he did not give any such notice.

It is my decision therefore that the tenant is not required to pay the \$50.00 per month rent increase requested by the landlord.

Three months lost rental revenue

It is my finding that the tenant is liable for three months lost rental revenue because the parties signed a fixed term tenancy agreement with an end of tenancy date of September 30, 2016, and the tenant vacated the rental unit on June 30, 2016.

The tenant testified that she had to vacate the rental unit early due to her financial position; however that does not release her from her obligation of having to pay rent to the end of the term of the lease if the landlord is unable to re-rent the unit, and it is my finding that the landlord took reasonable steps to try to re-rent the unit, but was unable to do so.

I will not allow the full amount claimed by the landlord however because, as stated above the landlord's rent increase was not allowed and therefore the monthly rent remained at \$1800.00 per month. Therefore the total amount allowed is \$5400.00.

Cable/Internet

I deny the landlords request for prorated amount for cable/Internet because, even though the tenant may have been allowed a deduction from the rent for having paid her own cable/Internet, there is no evidence provided by the landlord to show that he started providing cable/Internet after the tenant discontinued her cable/Internet service.

The landlord would only be able to charge for cable/Internet if he was providing that service, and if he was not the rent reduction would still apply.

Cleaning

I deny the landlords claim for cleaning, because the receipts provided by the landlord are incomplete, and do not show any address for which the receipts have been issued.

Carpet cleaning

I will allow the landlords claim for carpet cleaning because although the tenant claims that the carpets were dirty when she moved into the rental unit she has provided no evidence in support of that claim and therefore it's my finding that it's reasonable that the tenant leave the carpets clean at the end of the tenancy. The landlord has provided an invoice the clearly shows the address for which the work was done and therefore I allow the landlords claim for \$300.00 for carpet cleaning.

Maintenance and repairs, and missing blind panels

I deny the landlords claim for maintenance and repairs and for the missing blind panels because the landlord agent signed the moveout inspection report which states "None" under the clause "Damage to the rental unit or residential property for which the tenant is responsible:"

It is my decision that since the landlord's agent signed this document the agent agreed that the tenant was not responsible for any damage to the rental unit, and the landlord is therefore bound by that agreement.

Filing fee

Since I have still allowed a substantial amount of the landlord's claim I will allow the landlords request for recovery of the \$100.00 filing fee.

Therefore the total amount of the landlord's claim I have allowed is as follows:

3 months lost rental revenue	\$5400.00
Carpet cleaning	\$300.00
Filing fee	\$100.00
Total	\$5800.00

Conclusion

Pursuant to section 67 and 72 of the Residential Tenancy Act I have allowed \$5800.00 of the applicants claim and I therefore order that the applicant may retain the full security deposit of \$850.00, and I have issued a Monetary Order for the respondent to pay \$4950.00 to the applicant.

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: November 02, 2016

Residential Tenancy Branch