



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed receipt of the landlord's application for dispute resolution package and testified he did not provide any documentary evidence for this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the application.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

The tenant was aware that the unit was located in a building that allowed smoking, but was assured by the landlord that this particular unit was not smoked in. Based on this assurance, the tenant entered into a tenancy that began on June 1, 2016 on a fixed term until November 30, 2016. Rent in the amount of \$725.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$99.00 at the start of the tenancy.

Upon occupancy of the unit, the tenant experienced a pungent smell of cigarette smoke and reported this to the landlord via email and phone calls. Finally, on July 13, 2016 the tenant provided written notice to the landlord that he would vacate the rental unit by August 1, 2016. The tenant vacated the rental unit on August 5, 2016 and left a \$50.00 cheque for breaking the fixed term lease.

At the end of the tenancy the tenant agreed in writing that the landlord could retain all of the security deposit for breaking the lease.

The landlord seeks compensation for lost rent due to the tenant's early termination of the fixed term tenancy. The landlord testified that she commenced advertising on July 14, 2016 but with the high vacancy rates of the city, she did not secure a new tenancy until February 1, 2017. The landlord seeks to recover rent for August, September, October and November less the \$50.00 payment already made for a total of \$2,850.00. Additionally, the landlord seeks to recover the cost of advertising in the amount of \$164.32. The landlord has submitted copies of the advertising receipts.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

Analysis

Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on November 30, 2016. Although the tenant provided written notice of his intent to end the tenancy on August 1, 2016, he attempted to end the tenancy earlier than the date specified in the fixed term tenancy agreement, which is not in compliance with section 45 of the *Act*.

Pursuant to the *Residential Tenancy Policy Guideline, 30: Fixed Term Tenancies* ("Guideline 30"), neither a landlord nor a tenant can end a fixed term tenancy unless for cause or by written agreement of both parties. The parties in this case did not mutually agree to end the fixed term tenancy. Instead the tenant alleged cause, specifically the presence of smoke in the unit and building.

A tenant ending a fixed term tenancy for cause is required to provide proper written notice of breach of a material term to the landlord. Notice must include a deadline the breach must be repaired by and notification the party will end the tenancy if the breach is not rectified by the deadline. I find the tenant provided insufficient evidence to establish he provided proper notice of a breach of a material term of the tenancy agreement and therefore find the tenant did not end this tenancy in accordance with the *Act*.

Pursuant to the *Residential Tenancy Policy Guideline, 5: Duty to Minimize Loss* ("Guideline 5"), when a tenant ends the tenancy agreement contrary to the provisions of the *Act*, the landlord

claiming loss of rental income must make reasonable efforts to re-rent the rental unit. Based on the landlord's testimony I find the landlord mitigated her loss by advertising the unit promptly but despite this could not secure a tenancy until February 1, 2017. Therefore I find that the landlord is entitled to \$2,900.00 for August, September, October and November rent less the \$50.00 payment already made for a total of \$2,850.00.

In respect to a monetary claim for damages or for a monetary loss to be successful an applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

In this situation, the landlord has proven the unit remained vacant for the remainder of the fixed term, despite immediate advertisements. The landlord has established the cost of advertising in the amount of \$164.32 with submitted receipts. For these reasons I find the landlord is entitled to \$164.32 for advertisements.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$3,114.32.

In relation to the security deposit, I find the tenant waived his right to the return of the \$99.00 security deposit through written authorization pursuant to section 38 of the *Act* and therefore find the landlord is entitled to retain the \$99.00 security deposit, in partial satisfaction of the monetary award and I grant an order for the balance due \$3,015.32.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,015.32 against the tenant.

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 1, 2017

Residential Tenancy Branch