



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both parties attended the hearing and gave sworn testimony. They confirmed that the landlord's Application for Dispute Resolution and the Amendment was served by registered mail. I find the tenant is served with the Application and Amendment according to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 46 and 67 for unpaid rent and damages;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

Preliminary Issue:

The tenant said the landlord named his infant son as the tenant in their Application. The landlord requested we amend it to the name of the father who attended the hearing; they said they made a mistake. The tenant had no objections to amending the named party to his name, rather than his infant son's. The amendment was made as requested.

Issue(s) to be Decided:

Has the landlord proved on a balance of probabilities that the tenant owes rent because he broke a fixed term lease? Does the tenant also owe liquidated damages? Has the landlord proved the tenant also owes for damages to the property and the cost of repair? Is the landlord entitled to recover the filing fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The landlord provided a fixed term lease showing the tenancy commenced December 1, 2015 on a fixed term to November 30, 2016. Monthly rent was \$1800 and a security deposit of \$900 was paid. The tenant decided he might move out before the end of the fixed term as his home was completed. He

informed the landlord and provided them with the name of applicants who were prepared to take over the lease and extend it further. He vacated on September 29, 2016. The landlord said they were prepared to accept the applicants but after providing their application, the applicants did not respond to phone calls and then decided they did not want to sign the lease.

The tenant said the landlord did not inform him of the failure until October 1, 2016 after he had already moved out. He said if they had told him by September 29, 2016, he would not have moved. He does not believe he should be responsible for the rent to the end of the term because it was the fault of the landlord's agent that he was not informed promptly of the problem so he could stay and not cause any loss of rent to the landlord. He contended also that they should not be responsible for liquidated damages for if he had known of the problem, he would have stayed to the end of the term.

The landlord claims as follows:

\$157.50 for carpet cleaning.

\$250.95 for home cleaning. The tenant accepts these costs although he thinks they are excessive.

\$50 for a strata fine

\$3600 for rent for October and November 2016 as a new tenant could not be found until December 1, 2016.

\$1016.20 liquidated damages. This is the agent's fee to re-rent.

\$24.27 replace missing light bulbs and door stoppers. The tenant disagrees and said he replaced the original bulbs when he left. He had used low energy bulbs while he was a tenant.

\$21.58 to replace missing sink stoppers. The tenant said there were no sink stoppers at move-in and he bought some and left them. The landlord said these did not fit.

In evidence are statements of the parties, the tenancy agreement, the move-in and move-out report and invoices. In the tenant's statement, he claims double his security deposit and other amounts but he did not file an Application. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Sections 44 and 45 state how a tenancy may be ended. Section 44(1) (b) and 45(2) provide that a fixed term tenancy ends at the end of the fixed term, even if a tenant gives notice. I find a tenant is responsible for the rent until the end of the fixed term. Although both parties tried to come to a mutual arrangement to place a new tenant to take over the lease, I find it did not succeed through no fault of either party. The

proposed new tenants refused to enter a lease by the end of September 2016 when the tenant vacated. Although the tenant contends that he should have been informed immediately and he would have stayed, I find the Act obligates him to cover the rent until the end of the fixed term. I find the landlord entitled to recover \$3600 in unpaid rent to the end of the term which was November 30, 2016.

However, I find the landlord not entitled to the liquidated damages of \$1016.20 which they said were agent's fees to re-rent. I find according to the tenancy agreement, the tenant could have vacated at the end of the fixed term on November 30, 2016 and the landlord would have incurred the agent costs to re-rent.

Residential Tenancy Policy Guideline 4 states: *A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into.*

I find the tenancy agreement contemplated liquidated damages if it was breached. The landlord could have re-rented after the tenant vacated. Although the tenant did breach the agreement by leaving early, the landlord claims and is being awarded the full rental due to the end of the contract. I find the landlord is suffering no loss in this instance so I find them not entitled to an award for liquidated damages in addition to the full rent to the end of the term.

Awards for compensation for damages are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The onus is on the landlord to prove on the balance of probabilities that there is damage caused by this tenant, that it is beyond reasonable wear and tear and the cost to cure the damage. I find the tenant agreed to the landlord's claim for cleaning fees of \$157.50 and \$250.95 so I find the landlord entitled to recover these costs. I find the landlord also entitled to recover the strata fine of \$50 imposed due to the tenant's actions. I find these claims are well supported by invoices and strata letters.

In respect to the claim for missing light bulbs and sink stoppers, I find insufficient evidence to support the landlord's claim. The tenant denied responsibility for these items and I find they are not noted on the move-out report. I find the landlord not entitled to recover costs for these items.

In respect to the tenant's letter claiming his security deposit and other damages, I find the landlord filed their Application on October 14, 2016 which is within the time limit in section 38 of the Act to claim against the deposit. The deposit will be used to offset the amounts owing to the landlord. Furthermore, if the tenant wishes to make a claim against the landlord, he must file an Application and make his case. I decline to consider the tenant's submissions on his damages on the landlord's Application.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below and to retain the security deposit to offset the amount owing. I find the landlord is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Rent owed to end of fixed term	3600.00
Carpet cleaning fee	157.50
Cleaning service	250.95
Fine to strata for garbage	50.00
Filing fee	100.00
Less security deposit	-900.00
Total Monetary Order to Landlord	3258.45

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 25, 2017

Residential Tenancy Branch