



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, MND, OLC, FF.*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for the loss of income and for the cost of painting, drywall repair, removal of garbage and for the filing fee. The tenant applied for an order directing the landlord to return the security and pet deposits and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for the loss of income and for the cost of painting, drywall repair, removal of garbage and for the filing fee? Is the tenant entitled to the return of the security and pet deposits and the filing fee?

Background and Evidence

The tenancy started on May 01, 2017 for a fixed term of one year. The monthly rent was \$1,350.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$675.00 and a pet deposit of \$675.00.

The tenant stated that due to a high risk pregnancy they were forced to move out. The tenant verbally informed the landlord on February 01, 2018 that they intended to move out at the end of the month. The landlord offered the tenant another one of his rental properties but since the landlord's properties were up for sale the tenant declined. He stated that moving with a young child and a baby would be difficult and preferred to find a unit that was not up for sale. The tenant moved out on February 28, 2018.

Prior to moving out the tenant made efforts to enter into an agreement to mutually end the tenancy but the landlord refused to do so. The tenant stated that the landlord intimidated him by making threats of suing him and garnisheeing his wages. The tenant stated that he felt intimidated and offered the landlord to keep the deposits. The landlord initially agreed but changed his mind later on and filed this application for loss of income and other remedies.

The landlord stated that he was unable to find a tenant for the months of March and April 2018. The landlord is claiming loss of income for these two months based on the tenants having ended the fixed term lease, two months prior to the end date of the fixed term. The tenant stated that the landlord advertised the unit as available from March 01, 2018 and had some showings. The tenant filed copies of the advertisements which indicate that the landlord raised the rent from \$1,350.00 to \$1,400.00.

The landlord stated that the tenant left the yard full of wood, unwanted possessions and dog feces. The landlord agreed that he had a concrete mixing machine in the yard. The tenant stated that the fence was damaged during a wind storm and that the wood that was left in the yard was from the fence. The tenant also stated that the landlord did not fix the fence despite requests to do so and she was forced to lay a table across the gaping hole in the fence to prevent her pet dog and young child from going through it. The tenant stated that the landlord left a battery and propane tanks in the yard. The tenant provided photographs to support her testimony. The tenant took responsibility for any dog faeces that he may have missed picking up.

The landlord stated that the tenant put several screws in the wall and damaged the walls. The tenant agreed that he put screws in the wall to hang his television and some photographs. The landlord is claiming \$550.00 for the cost of repairs and painting the walls. The landlord testified that he had had the unit painted just prior to the start of this tenancy. The tenant stated that the unit was not freshly painted when they moved in and pointed out to the move in inspection report that indicates that some walls were stained. The tenant filed a copy of the move in inspection report.

The landlord is claiming the following:

1.	Loss of income for March and April 2018	\$2,700.00
2.	Yard cleanup	\$350.00
3.	Repair and paint walls	\$550.00
4.	Filing fee	\$100.00
	Total	\$3,700.00

The tenant is claiming the return of the security and pet deposits and the recovery of the filing fee.

Analysis

Landlord's application:

1. Loss of income for March and April 2018

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the sworn testimony of the both parties, I find that, on February 01, 2018, the tenant gave notice to end the tenancy effective February 28, 2018, which is prior to the end date of the fixed term and is on the day rent is due. By not giving the landlord adequate notice to end the tenancy, the tenant breached the tenancy agreement. The landlord is claiming a loss of income that resulted from this breach.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non –compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit. The landlord made efforts to re rent the unit by advertising the availability effective March 01, 2018. However, the landlord advertised the rental unit at a higher rent and was not successful in finding a tenant for these two months.

Residential Tenancy Policy Guideline#3 states that attempting to re-rent the premises at an increased rent will not constitute mitigation. It is likely that by advertising the rental unit at the same rent as the tenant was paying, the landlord may have found a tenant and would not have suffered a loss of income. By increasing the rent, I find that the landlord did not do whatever is reasonable to minimize the loss of income that he suffered and accordingly his claim for loss of income is dismissed.

2. Yard cleanup – 350.00

Based on the evidentiary photographs and the testimony of both parties, I find that the yard was littered with fence panels, a table, some equipment and some dog feces.

The tenant took responsibility for the dog waste he may have missed picking up. The tenant also stated that she was forced to use the table to block the gaps in the fence in the interest of the safety of her child and pet dog. I find that fixing the fence and removing the wood strewn in the yard was the responsibility of the landlord. The landlord also agreed that the equipment belonged to him. Since the tenant admitted to the possibility of having missed picking up some dog waste, I will award the landlord \$100.00 towards the cost of cleaning up the yard.

3. Repair and paint walls - \$550.00

The tenant agreed that he had puts screws in the wall to hang his television set and some photographs. The landlord's testimony about having the unit painted just prior to the start of this tenancy was contradicted by the move in inspection report that indicated that some walls were stained. Therefore in this portion of the landlord's application I prefer the testimony of the tenant over the landlord.

Section 40 of the *Residential Tenancy Policy Guideline* addresses the useful life of an item. I will use this guideline to assess the remainder of the useful life of the painting. As per this policy, the useful life of interior painting is four years. Since I am unable to determine when the unit was last painted, I am unable to determine whether the painting of the unit had outlived its useful life. However since the tenant agreed that he had puts screws in the wall, I will award the landlord \$100.00 towards his claim for repair and painting.

4. Filing fee - \$100

Since the landlord has proven a portion of his claim, I grant him the recovery of the filing fee of \$100.00.

Overall the landlord has established the following claim:

1.	Loss of income for March and April 2018	\$0.00
2.	Yard cleanup	\$100.00
3.	Repair and paint walls	\$100.00
4.	Filing fee	\$100.00
	Total	\$300.00

Tenant's application:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

In this case the tenant made application for the return of the deposits prior to the end of tenancy. The tenant is entitled to the return of the deposits but is not entitled to the recovery of the filing fee as his application was prematurely made.

The tenant had paid \$675.00 for the security deposit and \$675.00 for the pet deposit for a total of \$1,350.00. The landlord is currently holding the deposits and must return them to the tenant.

Overall the landlord's has established a claim of \$300.00 and the tenant has established a claim of \$1,350.00

I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$1,050.00 which consists of the difference in the established monetary claims of both parties. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$1,050.00. 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 **\$1,050.00**

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: May 02, 2018

Residential Tenancy Branch