



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNR, MNSD, MNDC, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, for late rent, for returned cheques, for the cost of resetting the fire system and for the filing fee. The landlord also applied to retain the security and pet deposits in partial satisfaction of her monetary claim.

Both parties attended the hearing and were given full opportunity to present evidence, make submissions and give affirmed testimony.

The tenant acknowledged receipt of evidence submitted by the landlord. Some of the landlord's documents that were filed into evidence were located by me after the hearing.

The landlord filed additional evidence in response to the tenant's request for a summons to appear that he wished to serve on the tenant that is currently occupying the rental unit. The tenant's request was denied. The landlord testified that after she received the decision denying the tenant's application for summons, she filed additional evidence. The tenant stated that he had received this additional evidence but has not opened the package because it was not within the legislated time lines for service. This additional evidence was not used in the making of this decision.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, for late rent, for returned cheques, for the cost of resetting the fire system and the filing fee?

Background and Evidence

The tenancy started on October 01, 2016 and ended on August 02, 2017. The monthly rent was \$1,075.00 due on the first of the month.

Prior to moving in, the tenant paid a security deposit of \$537.50 and a pet deposit of \$537.50. The landlord filed a copy of the tenancy agreement into evidence but failed to file a copy of the addendum. The tenant stated that he had not received a copy of the addendum even though by signing the tenancy agreement he acknowledged the presence of an addendum. He stated that he did not recall signing an addendum.

The landlord stated that a term of the addendum required the tenant to pay fees of \$25.00 for late rent and \$25.00 for cheques returned for insufficient funds. The landlord stated that the tenant paid rent late for the months of January, February, April, May and June 2017, after his rent cheques were returned for insufficient funds. The landlord is claiming \$50.00 for each of these months. The landlord filed copies of the returned cheques into evidence. The tenant stated that he recalled paying rent late only on three occasions.

The landlord stated that on June 13, 2017, the tenant put a pot on the lit stove and fell asleep. This resulted in a considerable amount of smoke which flowed out of the rental unit into the common areas. Another tenant pulled the fire alarm pull station and set off the fire alarm. The fire department attended the site. The tenant stated that he was awoken by the alarm. He stated that the smoke detector in his rental unit did not sound and therefore he continued to sleep while the smoke built up in volume and caused the other tenant to call the fire department.

The landlord incurred costs to reset the fire system, to have a fire watch until the system was reset and to obtain a fire report. The landlord is claiming these expenses.

The landlord served the tenant with a ten day notice to end tenancy for unpaid rent on June 02, 2017. The tenant disputed the notice and a hearing by conference call was scheduled for August 10, 2017. On July 27, 2017, the tenant cancelled his application for dispute resolution and informed the landlord that he was moving out at the end of July. Text messages between the two parties indicate that the tenant finally removed his furniture on August 02, 2017, which is when the landlord acquired possession of the unit.

The landlord stated that soon after she received the tenant's notice to end tenancy on July 27, 2017, she posted an advertisement for a new tenant on July 28, 2017 but was unable to find a tenant for August 2017. The landlord filed a copy of the advertisement. The landlord found a tenant for September 01, 2017 and is claiming the loss of income she suffered for the month of August 2017.

The landlord has filed a claim as follows:

1.	Fire watch, report and resetting	\$721.84
2.	Loss of income for August 2017	\$1,075.00
3.	Late fee/ NSF fee for 5 months	\$250.00
4.	Filing fee	\$100.00
	Total	\$2,146.84

Analysis

The landlord's monetary claim is assessed as follows:

1. Fire watch, report and resetting - \$721.84

Based on the testimony of both parties, I find that the tenant did put a pot on the stove, fell asleep and woke up to the sound of the general fire alarm in the building. The tenant testified that the smoke detector did not go off and had it done so, he would have woken up and turned off the stove. The landlord testified that the smoke alarm was tested two weeks prior to the incident and was found to be in good working condition. However the landlord also added that as a precaution she replaced the smoke detector after the incident. The landlord did not file a copy of the report that indicates that the smoke detector inside the rental unit was in good working order.

Based on the testimony of both parties, I find on a balance of probabilities that it is more likely than not that the smoke detector did not sound because if it did, the tenant would have woken up and prevented the subsequent sequence of events that were triggered by the pull station being activated by another tenant and which resulted in the expense that the landlord is claiming. Accordingly, I find that the tenant is not responsible for the cost incurred by the landlord for the fire watch, report and resetting the system.

2. Loss of income for August 2017 - \$1,075.00

The tenant did not pay rent on June 01, 2017 and was served a notice to end tenancy on June 02, 2017.

Residential Tenancy Policy Guideline#3 refers to claims for loss of income. This guideline states that in a month to month tenancy, if the tenancy is ended by the landlord for nonpayment of rent, the landlord may recover any loss of rent suffered for the next month, as a notice given by the tenant during the month would not end the tenancy until the end of the subsequent month.

Section 5 of the *Residential Tenancy Policy Guideline* states that where a landlord gives a notice to end tenancy and is entitled to claim damages for loss of rental income, the landlord's obligation to re-rent the rental unit begins after the relevant dispute period set out in the *Residential Tenancy Act* has expired. If the tenant files an application to dispute the notice, the landlord is not required to find a new tenant until the arbitration decision and order are received and the time limits for a review application has passed.

In this case, I find that on June 14, 2017, the tenant filed an application to dispute the notice to end tenancy and then moved out on August 02, 2017. The landlord provided evidence to support her testimony that she made efforts to find a tenant for August 2017 by advertising on July 28, 2017, but was unsuccessful and therefore suffered a loss of income. I find that the tenant is liable for this loss and accordingly I award the landlord her claim of \$1,075.00 for loss of income.

3. Late fee/NSF fee for 5 months - \$250.00

The landlord testified that the requirement to pay late fees and NSF fees is outlined in the addendum to the tenancy agreement. The landlord did not file a copy of the addendum into evidence and the tenant denied having received a copy of the addendum. The first payment for late rent and the rent cheque returned for insufficient funds was in January 2017, but the landlord did not make a claim for these charges until the end of tenancy.

The total amount claimed in the landlord's application is calculated on the basis of the documented record of late payment and returned cheques for each of the 5 months in total – January, February, April, May and June of 2017.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the landlord's failure to collect the \$25.00 fee for late payment of rent and the \$25.00 fee for returned cheques in a timely fashion, or shortly after each of the occasions when it became due, pursuant to the doctrine of laches, I find that this aspect of the landlord's application must hereby be dismissed.

4. Filing fee - \$100.00

The landlord has proven a portion of her claim and therefore I award her the recovery of the filing fee.

Overall the landlord has established a claim as follows:

1.	Fire watch, report and resetting	\$0.00
2.	Loss of income for August 2017	\$1,075.00
3.	Late fee/ NSF fee for 5 months	\$0.00
4.	Filing fee	\$100.00
	Total	\$1,175.00

The landlord has established a claim of \$1,175.00. . I order that the landlord retain the security deposit and pet deposit of \$1,075.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$100.00. 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 **\$100.00**.

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 15, 2018

Residential Tenancy Branch