



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for unpaid rent, loss of income, cost of repairs, painting and cleaning and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of the claim.

The landlord testified that he served the tenant with the notice of hearing on December 07, 2017, in person to the address provided by the tenant. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent, loss of income; cost of repairs, painting and cleaning and for the recovery of the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord testified that the tenancy started on July 01, 2017 for a fixed term of one year. The monthly rent was \$2,650.00 and did not include utilities. The tenant paid a security deposit of \$1,325.00. The dispute rental unit is located on the upper floor of a two level home. The lower level is rented out separately by the landlord.

The landlord testified that the tenant failed to pay utilities and has filed copies of gas and hydro bills for the period of the tenancy. The landlord stated that the tenant was required to pay utilities for the entire house which included the utilities utilized by the lower tenant.

The landlord testified that the tenant moved out on December 02, 2017 after providing the landlord with approximately three weeks of verbal notice.

The landlord stated that he started looking for a tenant by advertising the availability of the unit on English and Chinese websites. The landlord did not file any copies of the advertisements. The landlord testified that he kept looking for a tenant and had multiple showings but was unsuccessful in finding a tenant. The landlord is claiming rent for December 2017 and a loss of income for the remainder of the fixed term (six months up to June 30, 2018). The landlord stated that he moved into the rental unit in May 2018.

The landlord testified that the tenant left the unit in a damaged and unclean condition. The landlord did not file any condition inspection reports. However the landlord filed photographs that support the landlord's testimony regarding the condition of the unit and has filed estimates to repair, clean and paint the rental unit. The landlord stated that he has had the work done but did not file any proof of the actual cost incurred by him.

The landlord has claimed the following:

1.	Rent and loss of income	\$18,550.00
2.	Utilities	\$1,456.11
3.	Repairs and cleaning	\$8,543.89
4.	Filing fee	\$100.00
	Total	\$28,650.00

Analysis

1. Rent and loss of income - \$18,550.00

Based on the sworn testimony of the landlord and in the absence of evidence to the contrary, I find that the tenant did not provide adequate notice to end the tenancy. Section 45(2) 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:

- (a) Is not earlier than one month after the date the landlord receives the notice
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

In this case, the landlord stated that the tenant gave verbal notice approximately three weeks prior to December 02, 2017 which is the date he moved out. The end date of the fixed term is June 30, 2018.

Therefore I find that the tenant breached a term of the tenancy agreement by providing less than 30 days' notice to end the tenancy and on a date that is prior to the end date of the fixed term. Accordingly I find that the landlord is entitled to be compensated for any loss of income he may have suffered.

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.

The landlord testified that he advertised the availability of the rental unit on popular websites but did not find a tenant. The landlord did not file any copies of advertisement or documents to support his attempts to find a new tenant. In addition the landlord moved into the rental unit and therefore it is possible that the landlord did not find a tenant because he had plans to move into the rental unit.

However I find that by providing notice sometime in November 2017 to end the tenancy on December 01, 2017, the tenant provided notice prior to the end date of the fixed term and also did not provide at least 30 clear days to end the tenancy. Therefore I find that the landlord is entitled to the loss of income he suffered for December 2017.

Regarding the loss of income that the landlord is claiming for the balance of the fixed term, I find that the landlord has not provided sufficient evidence to support attempts made by him, to mitigate his losses. In addition the landlord moved into the rental unit in May 2018 and therefore it is possible that the unit was unavailable for rent after December 2017. Accordingly I find that the landlord has not proven that he is entitled to any losses of income he suffered after December 2017.

2. Utilities - \$1,456.11

Regarding the landlord's claim for utilities, I find he has provided sufficient evidence to prove the quantum of his claim. However since the basement was occupied by a different tenant, I find that the tenant is not responsible for the cost of utilities for the entire house. I award the landlord a half of his claim for unpaid utilities in the amount of \$728.05.

3. Repairs and cleaning - \$8,543.89

The landlord did not provide sufficient documentation to support his monetary claim. Most of the documents were estimates and despite having completed the repairs and cleaning and having incurred the cost of doing so, the landlord did not provide proof of the actual cost he incurred.

The landlord stated that he was unaware of the fact that estimates would not be sufficient evidence. However since the photographs do support the landlords testimony of the condition of the rental unit, I find that the landlord is entitled to at least a portion of his claim. The landlord agreed to accept \$4,000.00 as an alternative to having to file another application for the actual cost of restoration of the unit to a condition that it could be rented out.

4. Filing fee - \$100.00

Since the landlord is successful in his application I award him the recovery of the filing fee.

Based on the above I find that the landlord has established a claim as follows:

1.	Rent and loss of income	\$2,650.00
2.	Utilities	\$728.05
3.	Repairs and cleaning	\$4,000.00
4.	Filing fee	\$100.00
	Total	\$7,478.05

Overall the landlord has established a claim of \$7,478.05. I order that the landlord retain the security deposit of \$1,325.00 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 \$6,153.05. 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 of **\$6,153.05**.

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: July 20, 2018

Residential Tenancy Branch