



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover a loss of income, for the cost of cleaning, repair, key replacement and the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented herself. The corporate landlord was represented by their agent.

As both parties were in attendance I confirmed service of documents. The tenant confirmed receipt of the landlord's application for dispute resolution and evidence. The tenant said that she had not submitted any evidence of her own. I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to a monetary order to recover loss of income, for the cost of cleaning, repair, key replacement and the filing fee?

Background and Evidence

The parties agreed that the tenancy started on August 15, 2017 for a fixed term of one year ending on August 31, 2018. The monthly rent was \$1,080.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$540.00.

A copy of the tenancy agreement was filed into evidence. The agreement contains a liquidated clause which states that the tenant must pay \$400.00 if she ends the tenancy prior to the end date of the fixed term.

The tenant testified that on April 30, 2018 she gave the landlord notice to end the tenancy effective June 30, 2018. The landlord requested her to fill out an end of tenancy form which was completed and returned to landlord on May 06, 2018.

The landlord stated that she started looking for a tenant immediately. However the copies of the advertisements that the landlord filed into evidence are dated June 27, 2018. The tenant's notice to end tenancy was given to the landlord on April 30, 2018 which implies that the landlord waited for close to two months before advertising the availability of the rental unit.

The landlord stated that she had lawn signs posted as well but could not recall the number of showings she had for prospective tenants. The tenant stated that there were some showings in June but none that she was aware of in May 2018. The landlord was unsuccessful in finding a tenant for July 2018 but found one for August 01, 2018.

The landlord gave the tenant notification of the final move out inspection for June 30, 2018 and the tenant did not attend. The landlord carried out the inspection in the absence of the tenant and created a report. The report indicates that the unit was not cleaned and the carpets and drapes needed shampooing. The landlord is claiming a total of \$300.00 for cleaning.

The landlord also stated that the tenant's son caused damage to the sliding patio door lock and she had to purchase a part to have it fixed. The tenant stated that the clip on the door was problematic right from the start of tenancy and she used the lock at the base of the door instead of the lock near the handle of the door. The landlord also stated that the tenant returned 5 keys instead of 6 and the landlord is claiming \$3.50 for the missing key.

The landlord is claiming the following:

1.	Loss of income for July 2018	\$1,080.00
2.	Shampoo carpets	\$100.00
3.	Clean window covers	\$100.00
4.	General cleaning	\$100.00
5.	Replace broken lock	\$33.59
6.	Replace key	\$3.50
7.	Filing fee	\$100.00
	Total	\$1,517.09

Analysis

1. Loss of income for July 2018 - \$1,080.00

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 both parties, I find that the tenant did provide more than one clear month notice to end the tenancy. However the tenant provided notice to end the tenancy with an effective date of June 30, 2018, which is prior to the end date of the fixed term. By ending the tenancy prior to the end date of the fixed term, 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* or their tenancy agreement must do whatever is reasonable to minimize the loss.

In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit. The landlord filed copies of rental advertisements. The advertisements started on June 27, 2018. By advertising on June 27, 2018, it is unlikely that the landlord would find a tenant for July 01, 2018.

The landlord testified that she also had lawn signs but could not recall the number of showings she had. Since she was unable to recall how many showings she had in May and June of 2018, I asked the tenant about the landlord's efforts to find a new tenant. The tenant stated that she was not aware of any showings in May but that the landlord had had some showings in June. The tenant was unable to recall the number of showings as some of them were carried out while she was away at work.

Based on the dates of the advertisements filed into evidence by the landlord and the testimony of both parties, I find that on April 30, 2018, the tenant provided notice to end the tenancy. The landlord has not proven that she made any efforts to find a tenant in the month of May. The landlord's advertisements are dated June 27, 2018.

I accept that the landlord had lawn signs but the landlord could not recall showing the unit in the month of May. It is unlikely that the landlord would find a tenant for July if she started advertising the availability of the rental unit on June 27, 2018.

Based on my findings and section 7 of the *Residential Tenancy Act* I find that the landlord has not proven that she made sufficient efforts to minimize the loss she suffered. Accordingly I dismiss the landlord's claim to recover the loss of income that she incurred.

I reminded the landlord that the tenancy agreement has a liquidated damages clause which would be triggered in the event the tenant breached the tenancy agreement by ending the tenancy prior to the end date of the fixed term. The landlord stated that she did not wish to claim liquidated damages.

2. Shampoo carpets - \$100.00
3. Clean window covers - \$100.00
4. General cleaning - \$100.00

Based on the move out inspection report, the photographs and the testimony of both parties, I find that the landlord has proven her claim for items #2, #3 and #4

5. Replace broken lock - \$33.59

Residential Tenancy Policy Guideline #1 addresses **Landlord & Tenant – Responsibility for Residential Premises.**

In part, this guideline provides as follows:

The tenant is not responsible for reasonable wear and tear to the rental unit. Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant

Based on the testimony of the tenant, I find on a balance of probabilities that is more likely than not that the damage to the clip on the sliding door lock is a result of reasonable wear and tear. Therefore the landlord's claim for \$33.59 is dismissed.

6. Replace key - \$3.50

The tenant agreed that she had failed to return one of the six keys that had been given to her at the start of tenancy. Accordingly I award the landlord her claim to replace the key.

7. Filing fee - \$100.00

Since the landlord has proven a portion of her claim, I award her the recovery of the filing fee.

The landlord has established an entitlement as follows:

1.	Loss of income for July 2018	\$0.00
2.	Shampoo carpets	\$100.00
3.	Clean window covers	\$100.00
4.	General cleaning	\$100.00
5.	Replace broken lock	\$0.00
6.	Replace key	\$3.50
7.	Filing fee	\$100.00
	Total	\$403.50

Overall the landlord has established a claim in the amount of \$403.50. The landlord has a security deposit of \$540.00 in her possession. Therefore I order the landlord to retain \$403.50 in satisfaction of her monetary claim and to return the remainder of \$136.50 to the tenant.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of the monetary claim. Because the landlord has established a claim in the amount of less than the security deposit it is appropriate that I order the return of the balance of the security deposit to the tenant.

Accordingly, I so order. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$136.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$136.50**.

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: November 15, 2018

Residential Tenancy Branch