



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the landlord pursuant to sections 67, 38 and 72 of the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to a mutual end to tenancy agreement and for a monetary order for unpaid rent, liquidated damages, for the cost of repairs and garbage removal and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim.

The landlord testified that the notice of hearing and evidence package was served on the tenant on October 06, 2020 by registered mail to the address of the rental unit at which time the tenant was residing there. The landlord provided a tracking number. 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.

The landlord testified that the tenant moved out on October 15, 2020 and he has possession of the rental unit and therefore withdrew his application for an order of possession.

On October 30, 2020 the landlord amended his application to include a monetary claim for the cost of repairs and garbage removal. The landlord did not file evidence to support this portion of his claim as the work was still in progress at the time of the hearing. In the absence of documentary evidence to support his claim, I dismiss this portion of the landlord's application with leave to reapply. The landlord stated that he would like to retain the security deposit towards his claim for damages that he intended to make application for.

Accordingly, this hearing only dealt with the landlord's application for unpaid rent, for loss of income, for liquidated damages and to recover the filing fee.

Issues to be decided

Is the landlord entitled to a monetary order to recover unpaid rent, liquidate damages, loss of income and the filing fee?

Background and Evidence

The tenancy started on September 01, 2020. The monthly rent is \$3,000.00 due in advance on the first of each month. Prior to moving in the tenant paid a security deposit of \$1,500.00 which is currently held by the landlord.

The landlord testified that right from the start of tenancy the tenants were involved in activities that attracted the attention of the police. After some discussion, on September 14, 2020, the tenant served the landlord with a request to end the fixed term tenancy effective September 30, 2020. On September 15, 2020 the landlord served the tenant with an acknowledgement of the notice to end the tenancy on September 30, 2020.

A copy of the acknowledgement letter, which is signed by the tenant, was filed into evidence. The terms of the acknowledgement letter confirm that the tenant must pay liquidated damages for ending the fixed term tenancy prior to the end date of the fixed term and that the tenant is also responsible for any loss of income that the landlord may incur if he is unable to find a tenant prior to the end date of the fixed term which is August 31, 2021.

The tenants did not move out on September 30, 2020 and the landlord made this application on October 02, 2020. On October 15, 2020, the tenants informed the landlord that they were moving out that day.

The landlord stated that he conducted a move out inspection and created a report. However, the landlord did not file a copy of the report. The landlord stated that the unit was left with considerable damage to the cabinets, flooring and blinds. In addition, the tenants left behind huge amounts of unwanted possessions and garbage. The landlord stated that he has started the restoration work but was delayed due to the pandemic.

The landlord testified that the tenants did not pay rent for October and he suffered a loss of income for November.

The landlord is applying for a monetary order:

1.	Rent for October 2020	\$3,000.00
2.	Loss of income for November 2020	\$3,000.00
3.	Liquidated Damages	\$750.00
4.	Filing fee	\$100.00
	Total	\$6,850.00

Analysis

Based on the undisputed sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. I find that the tenant failed to comply with a term of the end to tenancy agreement which required the tenant to move out on September 30, 2020. The tenant failed to pay rent for October 2020 and moved out on October 15, 2020 without providing notice to the landlord.

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.

Based on the testimony of the landlord, I find that the tenant moved out on October 15, 2020 without giving the landlord any notice to do so. I accept the landlord's testimony regarding the condition of the rental unit and the difficulty in completing the restoration work in a timely manner due in part to the pandemic. In any event, by moving out on October 15, 2020 without proper notice, the tenant is liable for the loss of income suffered by the landlord for the month of November.

Based on the tenancy agreement filed into evidence, I find that the tenant was in a fixed term tenancy with an end date of August 31, 2021. By ending the tenancy prior to the end date, the tenant breached a term of the tenancy agreement.

Pursuant to section 4 of the *Residential Tenancy Policy Guideline*, 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 tenancy agreement has a term requiring the tenant to pay liquidated damages if he ends the tenancy prior to the end date of the fixed term. In the end to tenancy agreement between the parties, the tenant agreed to pay liquidated damages in the amount of \$750.00. Therefore, I find that the landlord is entitled to his claim for liquidated damages.

Since the landlord has proven his case, I grant him the recovery of the filing fee of \$100.00 for a total established claim of \$6,850.00.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the munt of \$6,850.00. 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 for **\$6,850.00**.

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: December 10, 2020

Residential Tenancy Branch