



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order to keep all or part of the pet and or security deposit, for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 15, 2010. Mail receipt numbers were provided in the Landlord's evidence. The Tenant confirmed receipt of the hearing package.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Preliminary Issues

The Tenant testified that he did not receive a copy of the Landlord's evidence.

The Landlord stated that he did not put the evidence package together so he could not provide testimony whether the Tenant was sent a copy of it.

Based on the aforementioned I find the Landlord did not provide the Tenant with a copy of their evidence which is a breach of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the respondent Tenant has not received copies of the Landlord's evidence I find that the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof for monetary compensation as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement effective April 1, 2010, and was scheduled to switch to a month to month tenancy after May 31, 2011. Rent was payable on the first of each month in the amount of \$1,050.00 and the Tenant paid a security deposit of \$525.00 on March 22, 2010.

The Landlord testified that on July 31, 2010 they received from the Tenant a written notice to end tenancy effective August 31, 2010. The Landlord was able to re-rent the unit effective September 20, 2010 and entered into the new agreement September 14, 2010. They collected \$350.00 from the new tenant for the ten days of September 2010 and are seeking to recover the balance of lost rent of \$700.00 from the Tenant. They are also seeking to recover the \$250.00 liquidated damages charge as provided for in the tenancy agreement. The Landlord stated that he could not produce receipts for the actual costs incurred to re-rent the unit however they do have four fulltime staff at this building who work many hours to show the unit and to run checks on potential tenants. He feels the \$250.00 represents a fair charge for the time and effort put in to re-rent the unit in relation to the rent charged.

The Tenant testified and confirmed he was aware of the \$250.00 liquidated damages charge that he would have to incur for breaking the lease. He stated that he was not aware that he would be required to pay the lost rent and he knows that the Landlord rented out the suite sometime in mid September. He argued that he had to move because his neighbour had bedbugs and the Landlord refused to allow him to move to a unit on the east side of the building.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage

or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the parties entered into a fixed term tenancy agreement and the Tenant ended the tenancy prior to the end of the fixed term. Section 45 of the Act provides 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 and is not earlier than the date specified in the tenancy agreement as the end of the tenancy. Therefore in compliance with the Act and the tenancy agreement the Tenant could not end the tenancy prior to May 31, 2011.

As per the above, I find the Tenant has breached the Act and tenancy agreement by ending his tenancy August 31, 2010. The Landlord mitigated his loss by re-renting the unit as soon as possible however he still suffered a loss of rent of \$700.00 for the period of September 1 – 19, 2010.

The tenancy agreement provided for liquidated damages of \$250.00. 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 amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I accept the Landlords testimony that this amount is reasonable as he has paid wages for his four fulltime staff to show the unit as often as possible and to conduct checks on potential customers.

Based on the aforementioned I find the Landlord has met the burden of proof for the test for loss, as listed above, and I hereby approve his monetary claim of **\$950.00**. (\$700.00 + 250.00).

The Landlord has been successful with his application, therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Loss of Rent for September 1 – 19, 2010	\$700.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,000.00
Less Security Deposit of \$525.00 plus interest of \$0.00	- 525.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$ 475.00

Conclusion

The Landlord's copy of this decision will be accompanied by a monetary order in the amount of **\$475.00**. This order must be served on the Tenant and may be filed with Provincial Court and enforced as an order of that Court.

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: January 19, 2011.

Residential Tenancy Branch