



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation for damage or loss and recovery of the filing fee.

The Landlord provided affirmed testimony that the Tenant, was served with the Application for Dispute Resolution, Notice of Hearing, and Landlord's evidence on February 16, 2012 by registered mail. The Landlord provided copies of the Canada Post receipt and registered mail tracking information into evidence.

I find that the Tenant was served the Application and Notice of Hearing in accordance with section 89 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for compensation for damage or loss and recovery of the filing fee?

Background and Evidence

The Landlord testified that they had a written tenancy agreement with the Tenant and the tenancy commenced July 01, 2011. The Landlord submitted a copy of the tenancy agreement signed by the parties into evidence. The tenancy agreement states that the tenancy is month to month and that the rent is \$600.00 per month due on the first of each month. The Landlord stated that the Tenant paid a security deposit of \$300.00 prior to the tenancy commencing. The Landlord stated that the Tenant gave written notice on January 12, 2012 to end the tenancy for January 31, 2012. The Landlord submitted a copy of the Tenant's written notice into evidence. The Landlord stated that they performed a move in condition inspection with the Tenant when the tenancy commenced and a move out condition inspection with the Tenant when the tenancy

ended. The Landlord submitted a copy of the move in and move out condition inspection report signed by the Tenant.

The Landlord stated that the Tenant provided his written forwarding address. The Landlord stated that they have not returned the security deposit to the Tenant, rather they filed their application for dispute resolution within 15 days of the end of tenancy.

The Landlord stated that the Tenant failed to clean the rental unit when the tenancy ended and failed to have the carpets cleaned as required by the tenancy agreement. The Landlord stated that she had to do the cleaning of the rental unit and that this took her four hours at a rate of \$10.00 per hour. The Landlord stated that the move out condition inspection report notes the areas that were not cleaned by the Tenant in the rental unit including the dirty condition of the carpets. The Landlord stated that they hired a professional carpet cleaning company to do the carpets at a cost of \$108.53 and provided the receipt into evidence. The Landlord stated when they discussed this with the Tenant he did not dispute their costs for the cleaning of the rental unit or the carpet.

The Landlord stated that because the Tenant did not provide them sufficient notice, less than 30 days as required by the Act and tenancy agreement, they were not able to obtain a tenant for February 01, 2012. The Landlord stated that they had ongoing advertising and were showing the rental unit to prospective tenants, but that they did not obtain a new tenant until March 01, 2012. The Landlord is requesting one month's rent in the amount of \$600.00 to compensate them for rental income loss and insufficient notice from the Tenant.

The Landlord is also requesting to recover the \$50.00 filing fee for their application.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 45 of the Act requires a Tenant to provide written notice as follows:

Tenant's notice

45 (1) A tenant may end a periodic 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, and

- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (2) 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, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

With regards to the Landlord's claim section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Regulation the Applicant (in this case the Landlord) has the burden of proof to establish his claim on the civil standard, the balance of probabilities.

To prove a loss and have the Respondent (in this case the Tenant) pay for the loss the Applicant (the Landlord) must satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent (Tenant) in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

4. Proof that the Applicant (the Landlord) followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenant breached the Act and tenancy agreement by failing to provide the Landlord with sufficient notice to end the tenancy, as required by section 45 of the Act and the tenancy agreement signed by the Tenant. The Landlord provided a copy of the written notice from the Tenant stating that he was giving notice on January 12, 2012 to end the tenancy for January 31, 2012. I find that the Landlord attempted to mitigate their losses by advertising the rental unit, showing the rental unit, cleaning the rental unit and carpets within a reasonable period of time. The Landlord obtained a new tenant for March 01, 2012. I find that the Landlord has provided sufficient evidence to establish a claim for rental income loss for February 2012 and is entitled to one month's rent in the amount of \$600.00 as a result.

The Landlord provided a copy of the move in and move out condition inspection report, a receipt for carpet cleaning, and verbal testimony about the condition of the rental unit and work performed to support their claim for cleaning and carpet cleaning costs. I find that the Landlord attempted to mitigate or minimize their losses by undertaking work on the rental unit within a reasonable period of time after the tenancy ended and at reasonable cost. As a result, I find that the Landlord has provided sufficient evidence to establish a claim for cleaning of the rental unit by the Landlord **\$40.00** (4 hours x \$10.00 per hour) and professional carpet cleaning **\$108.53**.

Section 72 of the Act specifies that the filing fee can be awarded as determined by the Dispute Resolution Officer. As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the **\$50.00** fee for this proceeding. I grant the Landlord a monetary order for **\$798.53**, which represents the rental income loss for the month of February 2012, the cleaning costs, carpet cleaning costs, and the filing fee.

The Landlord filed their Application for dispute resolution on February 12, 2012 which is within 15 days of the end of the tenancy on January 31, 2012, as per the Tenant's written notice. The Tenant did not file an application for return of their security deposit. I find that the Landlord did perform and document a move in and move out condition inspection with the Tenant, as required by the Act.

The Landlord confirmed that they hold a \$300.00 security deposit from the Tenant. As I have found that the Tenant owes the Landlord \$798.53, I order that the Landlord retain the security deposit in partial satisfaction of the claim. I grant the Landlord a monetary order pursuant to section 67 for the balance of the amount owing to the Landlord of **\$498.53**.

Conclusion

I find that the Landlord is entitled to \$798.53 pursuant to section 67 and 72 of the Act, and I have ordered that the Landlord retain the security deposit of \$300.00. I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenant in the amount of **\$498.53**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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: April 20, 2012.

Residential Tenancy Branch