



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and for unpaid rent; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a 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, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of. Pursuant to a written agreement, the fixed term tenancy started on July 1, 2011 and was to end June 30, 2012. The rent was \$1895.00 per month and the tenant paid a security deposit of \$947.50. Condition inspection reports were completed at the start and the end of the tenancy.

The landlord testified that the tenant repeatedly paid rent with cheques that were returned NSF. He stated that by February 2012 the tenant was short \$250.00 in rent and therefore gave the tenant a 10 Day Notice to End Tenancy. In his documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy dated February 24, 2012, with an effective date of March 8, 2012, which he said he served on the tenant by posting the notice on the tenant's door.

The landlord referred to his documentary evidence to show that the tenant agreed to do a move-out inspection for which the tenant failed to appear. The landlord advanced that the tenant has therefore forfeited his right to the return of his security deposit.

The landlord stated that he advertised the unit at the beginning of March 2012, and provided copies of emails from prospective tenants replying to his ad as early as March 5, 2012.

The landlord submitted a monetary claim as follows:

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| - Unpaid rent & \$30.00 NSF fee for February 2012: | \$ 280.00 |
| - Missing FOB: | \$ 25.00 |
| - Shoji screen repair: | \$ 112.00 |
| - Unpaid Hydro bill for February 2012: | \$ 42.67 |
| - Unpaid Hydro bill for March 2012: | \$ 10.84 |
| - Loss of rental income for March 2012: | \$1895.00 |
| - Loss of rental income for April 2012: | \$1895.00 |
| - Total: | \$4260.51 |

The tenant did not dispute the unpaid rent for February 2012, the missing FOB, the screen repair or the unpaid Hydro bills. He said that he was unable to attend the move-out due to work commitments. The tenant however argued that the landlord agreed to end the tenancy on the date of the notice, and that he was no longer bound by the terms of the tenancy agreement. The tenant referred to the landlord's email which states:

“Cameron, it is in your best interests to leave the suite, in good condition on or before Thurs March 8th. This is according to the 10-day End of Tenancy Notice you received from me, posted on your door, on Feb 24th. If you vacate by then, I will gladly refund your damage deposit....”

The landlord stated that he did not imply in this letter that he agreed to end the tenancy early.

Analysis

I do not find that the landlord's instructions to the tenant to leave on or before March 8, 2012 can be characterized as a mutual agreement to end the tenancy, particularly when the landlord points that this is according to a 10 Day Notice to End Tenancy, not a mutual agreement.

Section 45(2) of the *Residential Tenancy Act* states in part 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 the date specified in the tenancy agreement as the end of the tenancy. While the tenant may no longer be bound by the terms of a tenancy agreement once a 10 Day Notice to End Tenancy, the tenant may continue to be responsible for the loss of rental income, if the tenancy came to an end as a result of the tenant's failure to comply with the Act, regulation, or tenancy agreement. I find in this matter that the tenant failed to pay rent, which is a fundamental term of a tenancy agreement, and that the landlord had grounds to end the tenancy. The landlord showed that he advertised immediately in order to mitigate his loss, and that the unit was re-rented on May 1, 2012.

I find that the landlord is entitled to recover the loss of rental income for March and April 2012.

Concerning the security deposit; while I agree that the tenant extinguished his right to the return of the security deposit when he failed to attend the move-out inspection, it does not mean that the security deposit cannot be set off against other aspects of the landlord's claim against the tenant; otherwise the security deposit would amount to nothing more than a windfall.

I notice that the landlord rented the unit for \$55.00 more to the new tenants. Therefore I will set off \$110.00, or two months' rent against the amount owed to the landlord for March and April 2012 for the loss of rental income. Therefore the amount owed to the landlord is amended to \$3680.00 ($\$1895.00 \times 2 - \110.00).

Conclusion

The landlord established a claim of \$4150.51. I authorize the landlord to retain the tenants' \$947.50 security deposit for a balance owing of \$3203.01. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$3253.01. This Order may be registered in the Small Claims 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: April 18, 2012.

Residential Tenancy Branch