



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction,

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for loss of income, cost of cleaning and repairs and for the recovery of the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, cleaning, repairs and the filing fee?

Background and Evidence

The tenancy started on September 01, 2010 for a fixed term of one year, with an end date of August 31, 2011. According to the tenancy agreement at the end of the fixed term, the tenant must move out but also had the option to renew for an additional year. The option that the tenant must move out at the end of the fixed term was initialled by both parties.

The tenant testified that she understood that if she exercised the option to renew for an additional year, the tenancy would continue on a month to month basis. In an email dated August 09, 2011, the tenant agreed to exercise the option of continuing the tenancy for an additional year ending August 31, 2012. The email did not contain any other terms describing whether the tenancy was a fixed term or a month to month tenancy.

The landlord filed a copy of the undated second tenancy agreement which is not signed by either party.

Rent was \$1,750.00 due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$875.00. On June 27, 2012, the tenant gave the landlord notice to move out effective July 31, 2012.

The landlord filed a copy of the hand written move out inspection report, parts of which are not legible. In a letter dated August 07, 2012, the tenant provided the landlord with her forwarding address with a request to return the security deposit and to provide the tenant with a copy of the move out inspection report. The tenant stated that she did not receive a copy of the report and the copy that was given to her with the evidence package was altered after the inspection.

The landlord stated that the tenant left the unit in a dirty condition and did not sanitize or deodorize the carpets. The landlord also stated that there were missing light bulbs and that repairs included replacing the dead bolts, hauling away garbage, replacing a curtain rod and removing the tenant's satellite dish.

The landlord stated that he advertised the availability of the rental unit immediately upon receiving the tenant's notice to end the tenancy and had some showings prior to the end of the tenancy. The landlord stated that the tenant provided false information to prospective tenants and therefore he was unable to find a tenant for August. However, the landlord was also unsuccessful in finding a tenant for September and October. A new tenant moved in on November 01, 2012.

The landlord is claiming the following

1.	Loss of income for August 2012	\$1,750.00
3.	Replace light bulbs	\$11.47
4.	Replace locks	\$125.42
5.	Unplug toilet	\$50.00
6.	Fix and install bulbs in utility room	\$77.60
7.	Cleaning and repair	\$1,015.70
8.	Filing fee	\$50.00
	Total	\$3,120.47

Analysis

1. Loss of income for August 2012 - \$1,750.00

In this case, I find that after the initial fixed term tenancy ended, the tenancy continued without a formal agreement. It is the landlord's responsibility to ensure that the terms of the tenancy are spelt out and are not open to interpretation. In an email, dated August 09, 2011, the tenant agreed to continue to rent the unit until August 31, 2012 but no other terms of the tenancy were specified in the email.

The tenant testified that it was her intention to continue the tenancy for another year but she intended for the tenancy to be on a month to month basis. The landlord stated that he understood the tenancy to be a fixed term tenancy and therefore the tenant was responsible for the loss of income he suffered when she ended the tenancy one month prior to the end date of the "fixed term". In the absence of a formal tenancy agreement, there is no clear direction regarding the type of tenancy and the end of tenancy.

Since it is the landlord's responsibility to ensure that the terms of the tenancy are understood and agreed to by the tenant at the time the agreement is entered into, I find that I must treat the tenancy as a month to month tenancy, which is what the tenant understood it to be.

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic 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 the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I find that the landlord was notified about the tenant's intention to end the tenancy on June 26, 2012. The tenant moved out on July 31, 2012.

Based on the above, I find that there was no agreement that indicated that the tenancy was a fixed term tenancy and I further find that the tenant gave adequate notice to end the tenancy. Therefore I find that the landlord is not entitled to his claim for loss of income for August.

2. Deodorize carpet \$40.28

The tenant agreed that she had a pet cat and that she declined the offer of sanitization made by the professional carpet cleaners. The landlord stated that there was a pet odour in the rental unit and he purchased deodourizers to neutralize the odour. The tenant denied the presence of an odour. The landlord filed a witness statement that describes the carpet at the end of the tenancy. The statement does not mention the presence of an odour. The move out inspection report also does not mention the presence of an odour. In the absence of the documentation of the presence of an odour in the move out inspection report and the witness statement, I find that the landlord has not proven his claim and therefore it is dismissed.

3. Replace light bulbs - \$11.47

The landlord testified that five to six light bulbs were burnt out and he filed a receipt for the purchase of light bulbs. I find that the landlord is entitled to his claim.

4. Replace Locks - \$125.42

Section 25 of the *Residential Tenancy Act* states that at the request of a tenant at the start of a new tenancy the landlord must rekey or alter the locks and pay all costs associated with the changes. Therefore I find that the landlord is not entitled to the cost of replacing the locks.

5. Unplug toilet - \$50.00

The tenant filed correspondence between the two parties that indicate that problems with the toilets started as early as November 09, 2010. The tenant described the poor functioning of the flushing system and the presence of cracks in the toilet bowls. On March 09, the tenant reported a leaking toilet and on May 24, 2012 she reported a failing flushing mechanism in the ensuite bathroom. On May 30, the landlord attended the rental unit and fixed the problem. He stated that there was an accumulation of toilet paper which he removed and the toilet began working again.

Based on the correspondence between the two parties, I find that the toilets were problematic due to their age. On a balance of probabilities, I find that it is more likely than not that poor functioning of the flushing system caused the accumulation of toilet paper and the resulting blockage. I find that the landlord is responsible for maintaining the rental unit with regard to its age and for replacing problematic equipment. Accordingly I dismiss the landlord's claim of \$50.00 to unplug the toilet.

6. Fix and install lights in utility room - \$77.60

The landlord stated that the tenant had installed the wrong type of tubes in the lighting fixture in the utility room. On August 17, 2011, the landlord purchased two tubes and replaced the ones that the tenant had installed. The landlord is claiming \$77.60 for this replacement. I find that the landlord did this work in August 2011 and should have requested payment from the tenant at that time. I further find that even if the landlord had requested payment, he should have done so for the cost of the tube lights only which is \$13.92. Accordingly, the landlord's claim for \$77.60 is dismissed.

7. Cleaning and repair - \$1,015.70

The landlord is claiming a lump sum for cleaning and repairs. Upon asking for a breakdown, the landlord stated that he had spent 12 hours cleaning the rental unit at a rate of \$25.00 per hour for a total of \$300.00 and that the balance of the claim was for repairs in the amount of \$715.70.

The move out inspection report is hand written and portions are not legible. However, the tenant did agree that she did not dust the tops of the cabinets.

The landlord filed a letter from a witness who was present at the move out inspection. This letter states that the tenant agreed that she did not clean the blinds or valences. Other than a reference to the condition of the carpet, the witness statement does not mention any other areas that need cleaning other than the window coverings.

I have viewed the compact discs filed into evidence and find that the unit appears to be fairly clean. Pursuant to *Residential Tenancy Policy Guideline #1* an arbitrator may determine whether or not the condition of the premises meets reasonable cleanliness standards which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Based on the move out inspection report, the landlord's witness statement, the photographs, the verbal testimony of both parties and the *Residential Tenancy Policy Guideline #1*, I find that the tenant left the unit in a reasonably clean condition except for areas behind the appliances, the tops of cabinets and the window coverings. Even though the standard of cleanliness may not meet the landlord's standards, I find that the unit did not require 12 hours of cleaning. I find it appropriate to award the landlord four hours to clean the above. The landlord stated that he charges \$25.00 per hour and therefore I find that the landlord has established a claim of \$100.00 for cleaning.

The landlord stated that repairs included replacement of dead bolts, taking garbage away, replacing a curtain rod and removing the tenant's satellite dish. *Residential Tenancy Policy Guideline #1* provides that the tenant is not responsible for reasonable wear and tear to the rental unit or site or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*

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.

In this case I find that the repairs that the landlord is claiming are a result of normal wear and tear with the exception of the removal of the tenant's satellite dish. The tenant stated that she left garbage in bags at the side of the house awaiting garbage pickup day. All the landlord needed to do was to move the bags to the curb. I find it appropriate to award the landlord \$25.00 towards the removal of the satellite dish.

Overall for cleaning and repair the landlord has established a claim of \$125.00.

8. Filing fee - \$50.00

The landlord has proven a very small portion of his claim and therefore must bear the cost of filing his own application.

Overall the landlord has established a claim for:

1.	Loss of income for August 2012	\$0.00
3.	Replace light bulbs	\$11.47
4.	Replace locks	\$0.00
5.	Unplug toilet	\$0.00
6.	Fix and install bulbs in utility room	\$0.00
7.	Cleaning and repair	\$125.00
8.	Filing fee	\$0.00
	Total	\$136.47

I order that the landlord retain \$136.47 from the security deposit in satisfaction of the claim and must return the balance of \$738.53 to the tenant within 15 days of receipt of this decision.

Conclusion

The landlord must return \$738.53 to the tenant within 15 days of receipt 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: October 24, 2012.

Residential Tenancy Branch