



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, MNR, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, liquidated damages, cost of replacing locks, mailing costs and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. The tenant applied for the return of rent for January 2013, return of her security deposit, cost of stopping rent cheques and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, liquidated damages, and the filing fee? Is the tenant entitled to a monetary order for compensation?

Background and Evidence

The tenancy started on April 01, 2012 for a fixed term of one year ending March 31, 2013. The monthly rent was \$835.00 payable on the first of each month. The tenant paid a security deposit of \$402.50. A copy of the tenancy agreement was filed into evidence. An addendum to the agreement contains a clause that states that the security deposit will be forfeited in the event that the tenant ends the tenancy prior to the end date of the fixed term.

On December 31, 2012, the tenant reported a drip from the ceiling of the rental unit. The caretaker visited the unit to inspect the problem. The tenant stated that on this day she informed the caretaker that she would be moving out on January 15, 2013. On January 03, 2013, the tenant gave the landlord written notice to end the tenancy effective February 01, 2013.

The tenant stated in her notice that the reason for the early termination of the lease, was that there was a *“large leak in the ceiling which has been left unfixed for days and I am concerned that it is now a health hazard”*.

The landlord hired a professional roofer who inspected the roof on January 07, 2013. The roofer sent in a report stating that the roof is in good condition, but when it rains heavily as was the case, the rain water flowed over the edge of the roof and under the cap flashing which caused the drip.

The roofer also stated in his report, that the leak is not a serious one and in one hour a few drops will come through, only when it rains heavily. The roofer used a temporary seal and stated that he will re seal the membrane permanently, once the rain lets up.

The roofer returned on January 14, 2013 to repair the roof and the tenant requested him to carry out the work after she had moved out. The tenant moved out on January 15, 2013. The landlord stated that he started advertising the vacancy immediately upon receipt of the notice from the tenant and found a new tenant for February 15, 2013.

The tenant agreed that she did not return the keys to the landlord and did not dispute the landlord's claim of \$56.00 to replace the locks. The tenant's witness was an employee of the local municipality. He testified that he had not visited the rental unit but was aware that the rental unit had a history of maintenance problems over the last two years.

The landlord is claiming the following:

1.	Compensation for breaking the lease	\$402.50
2.	Loss of income for February 2013	\$805.00
3.	Replace locks	\$56.00
4.	Mailing costs	\$11.00
5.	Filing fee	\$50.00
	Total	\$1,324.50

The tenant is claiming the following:

1.	Rent for January	\$800.00
2.	Damage Deposit	\$400.00
3.	Bank fee	\$10.00
4.	Filing fee	\$50.00
	Total	\$1,260.00

Analysis

Landlord's application:

1. Compensation for breaking the lease - \$402.50

Residential Tenancy Policy Guideline #4 deals with situations where a party seeks to enforce a clause in a tenancy agreement providing for the payment of liquidated damages. 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, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.

A clause which provides for the automatic forfeiture of the security deposit in the event of a breach will be held to be a penalty clause and not liquidated damages unless it can be shown that it is a genuine pre-estimate of loss.

In this case a clause in the addendum attached to the tenancy agreement states” *We/I agree in the event we/I break the lease for any reason, our/my security deposit will be forfeited by the landlord/agent as the minimum compensation for not staying the twelve months period as agreed; provided we/I give proper one month’s notice and that we/I do not cause any damages to the suite”*

Based on the wording of the above clause, I find that it is a penalty clause and therefore, I dismiss the landlord’s claim to retain the security deposit as compensation for breaking the fixed term lease.

2. Loss of income for February 2013 - \$805.00

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.

In this case the tenant gave notice on January 03, 2013 to end the tenancy effective February 01, 2013. Based on the testimony of both parties, I accept the landlord's evidence in respect of the claim. In this case the tenant did not give the landlord adequate notice to end the tenancy, thereby causing the landlord to suffer a loss of income for half the month of February 2013. Accordingly, I find that the landlord is entitled to **\$402.50**, which is the loss that he suffered.

3. Replace locks - \$56.00

The tenant agreed that she had not returned the keys and also agreed to cover the cost of replacing the locks. Accordingly the landlord is entitled \$56.00.

4. Mailing costs - \$11.00

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the landlord's application to recover the mailing costs is dismissed.

5. Filing fee - \$50.00

Since most of the landlord's case has merit I find that he is entitled to the recovery of the filing fee of \$50.00.

Overall the landlord has established the following claim:

1.	Compensation for breaking the lease	\$0.00
2.	Loss of income for February 2013	\$402.50
3.	Replace locks	\$56.00
4.	Mailing costs	\$0.00
5.	Filing fee	\$50.00
	Total	\$508.50

Tenant's application:

1. Rent for January 2013 - \$800.00

The tenant states in her notice to end tenancy that she was ending the tenancy due to the leak in the ceiling and the problems associated with moisture build up in the ceiling. The tenant also states that the landlord did not attend to the problem for days. Based on the tenant's testimony, I find that she discovered the leak on December 31, 2012 and informed the caretaker on that day. The caretaker attended immediately at which time the tenant gave the caretaker verbal notice to end the tenancy, effective January 15, 2013.

The tenant described the leak as a few cups of water over a period of two weeks. If the "leak" was the reason for ending the tenancy, the tenant could have given the landlord an opportunity to fix it. Based on the tenant's testimony, I find on a balance of probabilities that the tenant had intentions of moving out prior to discovering the leak. The tenant stated that she moved into her new rental unit on January 15, 2013. It is more likely than not that this arrangement was made prior to December 31, 2012.

Having reviewed all the documents filed into evidence, I find that the landlord acted in a timely manner to make arrangements to have the problem dealt with. I further find that in order to give notice on December 31 to the caretaker, the tenant had more than likely already made the arrangements to move into the new rental unit. Therefore I find that the tenant is not entitled to compensation for the "leak".

2. Damage Deposit - \$400.00

The tenant is entitled to the return of the security deposit.

3. Bank fee - \$10.00

The tenant did not file adequate evidence to support her claim that she had incurred a cost of \$10.00 to have the rent cheques cancelled and therefore this claim is dismissed.

4. Filing fee - \$50.00

Other than the return of the security deposit, the tenant has not proven her case and must bear the cost of filing her own application.

Overall, the landlord has established a claim of \$508.50. I order that the landlord retain the security deposit of \$402.50 and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$106.00. 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 in the amount of **\$106.00**.

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: April 17, 2013

Residential Tenancy Branch

