



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Woods Joint Venture
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order, an order of possession and an order authorizing her to retain the security deposit. The landlord presented evidence showing that she served the tenants with the application for dispute resolution and notice of hearing (the “Hearing Documents”) via registered mail sent on August 14, 2013. The tenants are a father and son and the landlord sent both copies to the residential address of the father. She testified that the father had never lived in the rental unit but had signed the tenancy agreement and that at the end of the tenancy, the tenant’s mother emailed the landlord advising that the tenant had moved back home with his parents. I found that the landlord has properly served the Hearing Documents and the hearing proceeded in the absence of the tenants.

Although the landlord applied for an order of possession, she testified that the tenant vacated the rental unit at the end of June. As the landlord has regained possession of the rental unit, an order of possession is no longer required and I consider that claim to have been withdrawn.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord’s undisputed testimony is as follows. The tenancy began on November 21, 2012, the tenant paid a \$425.00 security deposit and a \$50.00 key deposit and rent was set at \$850.00 per month, payable in advance on the first day of each month. The tenancy was set to run for a fixed term ending on November 20, 2013.

The tenant failed to pay rent in the month of June and on June 5, the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent which the tenant did not

dispute. On or about July 2, the landlord received an email from the tenant's mother advising that the tenant had vacated the rental unit on June 29. The landlord immediately began advertising the rental unit but was unable to secure a new tenant until August 1.

The landlord seeks to recover \$850.00 in unpaid rent for June and a \$25.00 late payment fee pursuant to the terms of the rental agreement as well as \$850.00 in lost income for the month of July. The landlord further seeks to recover \$350.00 which she termed a "lease breakage fee" pursuant to the following term of the tenancy agreement:

If the Tenant abandons the premises prior to the termination of this Lease, and without having given proper notice, rent due and owing by the Tenant for the unexpired portion of the term of the Lease shall become fully due and payable with an administration charge of Three Hundred Fifty Dollars (\$350.00) for breaking the lease.

The landlord testified that at the end of the tenancy the carpet was soiled and required cleaning. The landlord had the carpet cleaned at a cost of \$157.50 which she seeks to recover from the tenant.

The landlord seeks to recover \$160.00 as the cost of removing items left behind by the tenant at the end of the tenancy. The landlord testified that she paid her staff \$40.00 per hour for 3 men to work a total of 4 hours.

The landlord testified that the unit was left unclean at the end of the tenancy and that she paid her staff \$40.00 per hour for 5 hours of cleaning. The landlord seeks to recover \$200.00.

The landlord testified that the tenant damaged 4 light fixtures by removing a hollow glass tube in each and that she had to purchase 4 new fixtures to replace the inoperable fixtures. The landlord seeks to recover \$100.00.

The landlord testified that the tenant failed to return all of the keys, including 1 apartment key, 2 building keys and 1 mailbox key. The landlord seeks to recover \$20.00 as the cost of replacing the keys and \$60.00 as the cost of replacing the lock on the mailbox.

The landlord also seeks to recover the \$50.00 filing fee paid to bring her application.

Analysis

The *Residential Tenancy Act* (the “Act”) establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the Respondent caused the Applicant to incur a compensable loss – s. 7(1);
2. Proof that the loss was suffered as a result of the Respondent’s failure to comply with the Act or Tenancy Agreement – s. 7(1);
3. Proof that the Applicant took reasonable steps to minimize the loss – s. 7(2).

I accept the landlord's undisputed testimony and find that the tenants were obligated under the terms of the tenancy agreement to pay \$850.00 in rent on the first day of each month and that they failed to pay rent on June 1, 2013. The tenants occupied the rental unit throughout the month of June and I find that their failure to pay rent or surrender the rental unit caused the landlord to suffer a loss of \$850.00 in the month of June. I further find that the tenants were liable under the terms of the tenancy agreement to pay a \$25.00 late payment fee if they failed to make their rental payment on the first day of the month. I find that the landlord acted reasonably to minimize her loss by serving a notice to end tenancy. I award the landlord \$875.00 which represents June rent and the late payment fee.

I find that on June 5, the tenants were served with a 10 day notice to end tenancy which was effective on June 15, 2013. The tenants did not comply with that notice and did not vacate the rental unit until June 29 and that the landlord did not learn that they had vacated until July 2. I find that the tenants’ failure to vacate the rental unit pursuant to the notice to end tenancy and their failure to advise the landlord prior to the beginning of July that the rental unit would be available in July caused the landlord to lose income in the month of July. I find that the landlord acted reasonably to minimize her loss by immediately advertising the rental unit and I award the landlord \$850.00.

I find that the landlord is not entitled to recover the lease breakage fee. The landlord is bound by the terms of the tenancy agreement, which the landlord drafted. The term in question as quoted above, states that this fee is only payable if the tenants abandoned the rental unit without notice. Because the landlord is the one who ended the tenancy through serving the tenants with a notice to end tenancy and because the tenants vacated the rental unit pursuant to that notice, I find that the fee is not invoked. I note, however, that the fee appears to be a penalty rather than a genuine pre-estimate of loss associated with breaking the fixed term and therefore would not be enforceable. The claim for the lease breakage fee is therefore dismissed.

The tenants had an obligation under section 37(2)(a) of the Act to leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. As the tenants did not dispute the landlord's testimony regarding the condition of the rental unit, I find that the tenants failed to comply with this obligation and that as a result, the landlord incurred expenses. I find that there were no steps that could have been taken by the landlord to minimize the loss. I find that the landlord is entitled to recover the \$157.50 cost of carpet cleaning, the \$160.00 cost of removing abandoned items, the \$200.00 in cleaning charges and the \$100.00 cost of replacing damaged light fixtures and I award the landlord those sums.

The tenants had an obligation under section 37(2)(b) of the Act to return to the landlord all keys in their possession. I find that the tenants failed to meet this obligation and that as a result, the landlord incurred expenses. I find that there were no steps that could have been taken by the landlord to minimize the loss. I find that the landlord is entitled to recover the \$20.00 cost of replacing the keys and the \$60.00 cost of replacing the mailbox lock and I award the landlord those sums.

As the landlord has been substantially successful in her claim I find that she is entitled to recover the \$50.00 filing fee and I award her that sum.

Conclusion

The landlord has been successful in the following claims:

June rent and late payment fee	\$ 875.00
July loss of income	\$ 850.00
Carpet cleaning	\$ 157.50
Item removal	\$ 160.00
Cleaning charges	\$ 200.00
Light fixture replacement	\$ 100.00
Key replacement	\$ 20.00
Mailbox lock replacement	\$ 60.00
Filing fee	\$ 50.00
Total:	\$2,472.50

I order the landlord to retain the \$425.00 security deposit and \$50.00 key deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance of \$1,997.50. This order may be filed in the Small Claims Division of the 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: November 20, 2013

Residential Tenancy Branch

