



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNR, MNSD, MND, 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, the cost of painting, cleaning, bulb replacement and yard work. The landlord also applied to retain the security and pet deposits and recover the filing fee. The tenant applied for a monetary order for the return of the security deposit, the pet deposit and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony and to make submissions. The parties represented themselves. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to a monetary order for the loss of income, the cost of painting, cleaning, bulbs and yard work? Is the tenant entitled to the return of the deposits?

Background and Evidence

The tenancy started on October 01, 2018 for a fixed term of two years with an end date of October 31, 2020. A copy of the tenancy agreement was filed into evidence. The monthly rent was \$1,500.00 and was payable on the first of the month.

On June 06, 2019, the tenant gave written notice to the landlord to end the tenancy effective July 31, 2019. The tenant stated that she had purchased a new home and intended to move into the home when the purchase completed on July 05, 2019. The tenant testified that she started moving her possessions out of the rental unit in early July and was fully moved out by July 15, 2019.

The parties met to do a move out inspection on July 18, 2019 and the landlord provided the tenant with a list of tasks to be carried out. The tenant stated that she returned to the rental unit and completed what needed to be done. The parties met again on July 24, 2019 and completed the move out inspection. A report of the inspection was filed into evidence. The report indicates that there were bulbs that needed to be replaced and some cleaning to be done.

The landlord stated that the tenant did not weed the flower beds in the yard. The landlord is claiming compensation for her time spent weeding the beds and cleaning the house. To support her monetary claim, the landlord filed photographs of the condition of the yard and the house. The photographs that she uploaded to her electronic file are black and white and the resolution is very poor. The landlord is also claiming the cost of painting the garage floor. The tenant stated that she cleaned the garage floor and did not think it was her responsibility to paint it.

The landlord stated that she advertised the availability of the rental unit on June 18, 2019 and had one showing on June 23, 2019. The landlord stated that she did not advertise again and depended on the June 18 listing to find a new tenant. A new tenant was found for September 01, 2019.

On July 24, 2019, when the parties met to carry out the final inspection, the landlord asked the tenant to sign a mutual end to tenancy agreement. The tenant had already moved out and signed the agreement without paying attention to the end date of the tenancy as written on the mutual end to tenancy agreement. Shortly after, the tenant realized that the date was documented as August 15, 2019 and contacted the landlord to correct it. The landlord refused to do so and demanded that the tenant pay rent up to August 15, 2019.

The landlord is claiming the following:

1.	Rent up to August 15, 2019	\$750.00
2.	Yard work	\$180.00
3.	Cleaning	\$120.00
4.	Bulbs	\$23.22
5.	Paint garage floor	\$90.00
6.	Advertising	\$150.00
7.	Filing fee	\$100.00
	Total	\$1,413.22

The tenant is claiming the return of the security and pet deposits and the recovery of the filing fee.

The parties could not resolve their issues and on August 09, 2019, both parties applied for dispute resolution.

Analysis

Landlord's application:

1. Rent up to August 15, 2019

Based on the evidence and testimony of both parties, I find that on June 06, 2019, the tenant gave notice to end the tenancy effective July 31, 2019. The landlord waited for 12 days before she advertised the availability of the rental unit. The tenant indicated to the landlord that she would move out by July 15, 2019, if the landlord found a tenant earlier than July 31, 2019. The tenant moved out on July 15, 2019 and paid rent for the entire month of July.

Section 45 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 is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the sworn testimony of both parties, I find that, on June 06, 2019, the tenant gave notice to end the tenancy effective July 31, 2019 which is prior to the end date of the fixed term (October 31, 2020). By ending the tenancy prior to the end date of the fixed term, the tenant breached the tenancy agreement. The landlord is claiming a loss of income that resulted from this breach.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act* or their tenancy agreement must do whatever is reasonable to minimize the loss.

In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit.

Based on the testimony and documentary evidence of the landlord, I find that the landlord waited for 12 days before advertising the availability of the rental unit. In

addition after the initial advertisement on June 18, 2019, the landlord did not re-advertise and stated that she relied on the initial advertisement. Therefore, I find that the landlord did not make reasonable efforts to mitigate her losses.

The landlord had a total of seven weeks to find a tenant for August 01, 2019 but chose to advertise after a delay of 12 days after receiving the tenant's notice to end tenancy and did not repeat the advertisement. Even though I find that the tenant breached the tenancy agreement, the legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claim. In this case I do not find that reasonable efforts were made by the landlord to prevent the loss and therefore I find that the landlord is not entitled to her claim for loss of income for August 1-15, 2019.

2. Yard work - \$180.00

The landlord testified that the tenant left the flower beds in the yard, over run with weeds and is claiming the cost of her time to clean up the beds. The tenant stated that as per the tenancy agreement she was only responsible for mowing and snow removal. The landlord agreed that the yard was mowed at the time of the move out inspection.

Residential Tenancy Policy Guideline #1 addresses:

Landlord & Tenant – Responsibility for Residential Premises – Property Maintenance.

The guideline states that generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

In this case the tenancy agreement did not require the tenant to carry out any yard maintenance other than mowing and snow removal. The landlord agreed that the yard was mowed on the last day of tenancy and therefore the landlord's claim for \$180.00 for yard work is dismissed.

3. Cleaning - \$120.00

The tenant testified that the initial move out inspection was done on July 18, 2019 and the landlord provided the tenant with a list of items to be done. The tenant stated that she returned to the rental unit and except for bulb replacement completed the work the landlord requested. The tenant filed photographs to support her testimony.

The photographs before me are black and white and it is not possible to determine the condition of the rental unit due to poor resolution. However the photographs filed by the landlord are also black and white and have poor resolution.

Based on what I am able to determine from the photographs and also based on the testimony of the tenant, I find that the tenant completed the tasks requested by the landlord and the unit appears to be in a reasonably clean condition.

Residential Tenancy Policy Guideline #1 addresses:

Landlord & Tenant – Responsibility for Residential Premises.

This guideline states that an arbitrator may determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant. Based on the above, I accept the tenant's testimony that the unit was left in a reasonable clean condition and therefore I dismiss the landlord's claim for the cost of cleaning.

4. Bulbs - \$23.22

Residential Tenancy Policy Guideline #1 also addresses the replacement of light bulbs and states:

The landlord is responsible for:

- Making sure all light bulbs and fuses are working when the tenant moves in.
- Replacing light bulbs in hallways and other common areas like laundry and recreational rooms; and
- Repairing light fixtures in hallways and other common areas like laundry and recreational rooms.

The tenant is responsible for:

- Replacing light bulbs in his or her premises during the tenancy,
- Replacing standard fuses in their unit (e.g. stove), unless caused by a problem with the stove or electrical system, and
- Making sure all fuses are working when he or she moves out, except when there is a problem with the electrical system.

Based on this policy guideline, I find that the tenant is responsible to replace light bulbs for use during the tenancy and therefore I dismiss the landlord's claim. The landlord is responsible for replacing bulbs prior to the start of a tenancy.

5. Paint garage floor - \$90.00

Based on the tenant's testimony, the garage was used for storing a lawn mower, tools, firewood, tires etc. The tenant stated that the garage was used in a reasonable fashion and cleaned at the end of tenancy. I find that the tenant is not responsible for the painting of the garage floor.

6. Advertising - \$150.00

The landlord did not file sufficient evidence to support her claim and therefore it is dismissed.

7. Filing fee - \$100.00

The landlord has not proven her case and therefore must bear the cost of filing her own application.

Overall the landlord has not established a claim against the deposits and therefore must return the entire sum of the security and pet deposits to the tenant. Since the tenant is successful in her application, I award the tenant the recovery of the filing fee of \$100.00. The landlord is currently holding \$750.00 for a security deposit plus \$750.00 for a pet deposit. The tenant has established a claim of \$1,600.00 which includes the deposits plus the filing fee. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,600.00**.

The landlord's application is dismissed in its entirety.

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 25, 2019

Residential Tenancy Branch