

DECISION

Dispute Codes MNR, MNSD, FF, O

Introduction

This hearing dealt with applications from the landlord and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for a monetary order for unpaid rent pursuant to section 67 and authorization to retain all or a portion of the tenants' pet damage and security deposits in partial satisfaction of the monetary order requested, pursuant to section 38. The tenants applied for authorization to obtain a return of their pet damage and security deposits pursuant to section 38. Both parties applied to recover the filing fees for their applications from one another pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. Both parties testified that they sent the other party their dispute resolution hearing package by registered mail. Both parties provided tracking numbers for their mailings. Both parties testified that they received the other parties' dispute resolution hearing package. I am satisfied that the parties sent their dispute resolution hearing packages to one another in accordance with the *Act*.

The parties testified that they sent one another their evidence packages. However, the landlord testified that he never received the tenants' evidence package. At the hearing, I learned that this package was sent by regular mail to an incomplete address in the United States. After reviewing the tenant's evidence, the landlord confirmed that he had copies of their evidence with the exception of a letter to the Residential Tenancy Branch, which the tenant agreed to read into evidence. I find that the landlord's ability to present his position and refute the tenants' position was not compromised by the tenants' failure to provide this evidence to him in advance of the hearing.

Although the tenants confirmed receiving the landlord's 30-page evidence package, the Residential Tenancy Branch did not receive this evidence package from the landlord. At the commencement of the hearing, I reviewed the landlord's evidence package with him and the tenants. The only substantive documents that the Residential Tenancy Branch did not already have before this hearing were the Condition Inspection Report and the Residential Tenancy Agreement. Both parties confirmed the substantive details of these documents. Neither of these documents were in dispute, nor did a consideration of the applications turn on these documents. I proceeded to hear these applications, but noted that I would adjourn the hearing if it appeared to me that it was essential to obtain a copy of the landlord's evidence package in order to make a decision on these applications. During the hearing, I was satisfied that I was able to

make a determination on the applications without adjourning to obtain missing portions of the landlord's evidence package.

Issue(s) to be Decided

Is the landlord entitled to obtain a monetary Order for unpaid rent? Which of the parties is entitled to obtain the tenants' pet damage and security deposits? Are either of the parties entitled to recover their filing fees from the other party?

Background and Evidence

This fixed term tenancy commenced on October 1, 2009. The parties agreed that the Residential Tenancy Agreement scheduled September 30, 2010, as the end date for this tenancy. Monthly rent was set at \$2,235.00, payable on the first of the month. The landlord continues to hold the tenants' \$1,100.00 security deposit and \$1,100.00 pet damage deposit, paid on or about September 30, 2009.

The parties agreed that the landlord and tenants conducted a joint move-out condition inspection and there are no issues regarding the tenants' maintenance of the rental unit during their tenancy. The landlord provided undisputed oral testimony that the tenants did not provide him with their forwarding address in writing after they left the rental unit. He applied for authorization to retain the tenants' pet damage and security deposits in partial satisfaction of the \$2,235.00 in monthly rent he did not receive from the tenants for September 2010.

The tenants entered evidence that they had an oral agreement with the landlord whereby he agreed to let them end their tenancy a month early without charging them rent for September 2010. The tenants submitted into written evidence a copy of the female tenant's July 31, 2010 email to the landlord which read as follows:

...According to our tenancy agreement for 123 XYZ Street in Anywhere, BC which ends October 1st, 2010, I am writing to notify you that we would like to end our tenancy term on September 1, 2010.
(as in original)

In the tenants' December 17, 2010 letter to the Residential Tenancy Branch, the female tenant stated that she sent the landlord the above email on August 1, 2010. This email followed discussions between the landlord and the tenants, one of which occurred on July 30, 2010. In her December 17 letter, she described the July 30 conversation in the following terms in which she called the landlord "to let him know that I was willing to leave at the end of August (which was one month before the tenancy agreement)":

...He said he was not happy that he didn't sell his house yet and did not want to look for a new tenant but he said we had to do what we needed to do...

The female tenant sent another email to the landlord on August 30, 2010 in which she quoted section 45(2) of the *Act* as follows.

45 (2) *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, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

She then maintained that she did not want to breach her tenancy agreement, and, for that reason, she sent her notice “on July 31 to end the tenancy on August 31 which exactly is one month.”

The tenants applied for a monetary award of \$2,200.00 to obtain a return of their pet damage and security deposits. In their application, they stated that they believe they were entitled to “one month’s rent and our deposit.”

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The type of oral agreement to end a tenancy the tenants maintain they entered into with the landlord has no standing under the *Act*. Section 52 of the *Act* requires that a notice to end a tenancy must be in writing. In this case, even the email that the tenant sent on July 31, 2010 (or August 1, 2010, depending on which portion of the tenant’s written evidence is accurate), would not satisfy the requirement to end a tenancy in writing.

In addition, the tenants have seriously misinterpreted section 45(2) of the *Act*. Subsection 45(2)(b) prevented the tenants from ending their fixed term tenancy earlier than the scheduled September 30, 2010 date specified in the fixed term tenancy agreement. The female tenant was incorrect in her August 30, 2010 email assertion

that the tenants were not in breach of their tenancy agreement because they sent their notice to the landlord on July 31, 2010 to end their tenancy on August 31, 2010.

I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the September 30, 2010 date specified in that agreement. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

Separate from the above-noted fundamental problems with the tenant's evidence, I find evidence that calls into question the tenants' allegation that they had an oral agreement with the landlord to forego their September 2010 rent. Although my overall decision does not turn on this point, the written evidence the tenants submitted does not support their assertion that there was an oral agreement with the landlord to allow the tenants to end their tenancy early without having to pay rent for September 2010. The tenants' claim that the landlord told them on July 30, 2010 that the tenants "had to do what they needed to do" in no way equates to an agreement from the landlord that he would not charge them rent for September 2010, the last month of their fixed term tenancy. At the hearing and in the landlord's emails entered into written evidence, the landlord denied having agreed to forego the tenants' rent for September 2010.

Section 21 of the *Act* provides the only mechanism whereby a tenant can apply a security deposit or pet damage deposit to the last month's rent. However, this can only occur if the landlord has given his written consent. No such written consent was given in this case.

There is undisputed evidence that the tenants did not pay any rent for September 2010, the last month of their fixed term tenancy. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

In this case, the landlord testified that he tried to rent the premises for September 2010, as he was also attempting to sell the property. He said that he posted advertisements with a few local businesses where tenants have been attracted in the past. He also said that he had a realtor attempting to rent the premises. He testified that he had one possible renter, but this did not result in a rental. He said that he continues to own the property and has been unsuccessful in renting it to another tenant. The female tenant said that she was not aware of the landlord's efforts to re-rent the premises in September 2010. Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for September 2010.

As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the tenants' loss.

I find that the landlord is entitled to a monetary award in the amount of \$2, 235.00 to compensate him for losses he incurred due to the tenants' non-payment of rent for September 2010.

I allow the landlord to retain the tenants' pet damage and security deposits to partially offset this monetary award plus interest. No interest is payable over this period.

I dismiss the tenants' application for a monetary award of \$2,200.00 and to obtain recovery of their pet damage and security deposits.

Since the landlord was successful in his application and the tenants were not, the only order I make regarding the recovery of filing fees is to permit the landlord to recover his filing fee from the tenants. I dismiss the tenants' request to recover their filing fee.

Conclusion

I issue a monetary award in the landlord's favour in the following terms which allows the landlord to recover losses he incurred through the tenants' failure to pay rent for September 2010 and to recover his filing fee for his application.

Item	Amount
Loss of Rent for September 2010	\$2,235.00
Less Security Deposit	-1,100.00
Less Pet Damage Deposit	-1,100.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$85.00

I also allow the landlord to retain the tenants' pet damage and security deposits in partial satisfaction of the monetary award issued in the landlord's favour.

I dismiss all elements of the tenants' application, including their application to recover their filing fee.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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*.