



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, FF, O

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent, recovery of the filing fee and other issues. Both named tenants appeared at the hearing and the landlord was represented by an agent. Both parties were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Preliminary Matters

The landlord provided receipts for costs incurred to locate and serve the tenants for inclusion with the landlord's monetary claim. The landlord was informed that such costs are not recoverable under the Act and I did not amend the application to include such amounts.

The male tenant raised the issue of service of hearing documents at his place of employment. The landlord's agent stated he was unaware that the address for the male tenant was an employment address. The tenant acknowledged receipt of the hearing documents and though not served in accordance with section 89 of the Act, I deemed him sufficiently served under section 71 of the Act. The tenant then provided the landlord's agent with his residential address for any future correspondence.

The male tenant also stated that he has gone bankrupt and that any debts owing to the landlord were included in his bankruptcy proceedings. The landlord's agent stated the landlord had not been notified of bankruptcy proceedings. I decided to proceed with the application against the tenant and any Monetary Order issued to the landlord may be handled in accordance with applicable bankruptcy procedures.

The female respondent raised two preliminary issues. One issue being that she was served with the hearing documents only one week before this hearing. The landlord's agent provided evidence that the female respondent was served via registered mail that was sent to the female respondent's home on October 7, 2010 and that the registered

mail was returned as unclaimed. The female respondent verified that the address used for the registered mail was correct but explained that she does not accept registered mail. The female respondent did not deny that she received a notification card for the registered mail. Section 90 of the Act deems a person to be served five days after mailing and I find the tenant was served on October 12, 2010 despite her decision to not pick up the registered mail.

The second issue raised by the female respondent was that she was not a tenant under this tenancy as she had not signed the tenancy agreement. I noted that the tenancy agreement provided by the landlord bears a signature in the space provided for the female tenant's signature. The female respondent also acknowledged residing in the rental unit for a brief period of time after the tenancy commenced. The female respondent indicated that being held responsible for this debt is unmanageable as the respondent is a single mother.

The male tenant explained that he alone negotiated the terms of tenancy with the landlord via telephone and email and that he alone signed the tenancy agreement and returned it to a person acting on behalf of the landlord. The male tenant stated he did not sign the tenancy agreement for the female tenant. The male tenant stated that he believed he had a copy of the tenancy agreement he signed but that it was in storage.

In the evidence package submitted by the landlord I note that the male tenant states in an email dated January 11, 2009 that the landlord can pursue the female respondent for the debt but that she has no money. The landlord also asks for the female respondent's contact information but I do not see a response from the tenant. Further, the male tenant refers to "we" when informing the landlord that they may have a replacement tenant for the rental unit. At no time does the male tenant indicate the female respondent was not a tenant in these communications with the landlord. Rather, this issue has only been raised since the landlord made this application and it appears the tenants are motivated to have the male tenant held responsible for any liability as he has filed bankruptcy.

The female tenant did not provide an example of her signature for this proceeding or make any indication prior to this proceeding that her status as an occupant or a tenant would be an issue raised by the respondents. Accordingly, I do not find the landlord had been notified of this issue and was not prepared to deal with this issue.

Since there is a signature appearing on the tenancy agreement for the female tenant, and given the tenant had ample opportunity to raise this issue and provide documentary evidence to refute her status as a tenant, I find that based on the balance of

probabilities, the female respondent is a signatory to the tenancy agreement. Accordingly, I find that the female respondent is a tenant and both named respondents are named in this decision and the Monetary Order that accompanies it.

Issue(s) to be Decided

1. Has the landlord established an entitlement to monetary compensation for unpaid rent, advertising costs and propane costs?
2. Is the landlord authorized to retain the security deposit and pet deposit in partial satisfaction of the amounts awarded to the landlord?

Background and Evidence

On October 5, 2008 the parties executed a tenancy agreement for a one-year fixed term tenancy set to commence October 1, 2008 for a monthly rent of \$2,350.00. The landlord received a \$1,175.00 security deposit and a \$1,175.00 pet deposit on October 1, 2008. Condition inspection reports were not prepared by the landlord. Shortly after the tenancy commenced the female tenant moved out of the rental unit. The rent went into arrears and on January 7, 2009 the male tenant notified the landlord that he would be vacating the rental unit. The male tenant vacated by January 31, 2009.

The landlord's claims are itemized as follows:

<u>Item</u>	<u>Reason</u>	<u>Amount claimed</u>
January 2009 rent	Unpaid rent	2,350.00
February 2009 rent	Loss of rent	2,350.00
March 2009 rent	Rent differential	600.00
April 2009 rent	Rent differential	600.00
May 2009 rent	Loss of rent	2,350.00
June 2009 rent	Rent differential	450.00
July 2009 rent	Rent differential	450.00
August 2009 rent	Rent differential	450.00
September 2009 rent	Rent differential	<u>450.00</u>
Total loss of rent		\$ 12,400.00
Advertising costs	Ads in January 2009	74.27
Propane fill cost	Tenants did not fill tank	380.43
Filing fee		<u>100.00</u>
Total claim		\$ 12,954.70

Advertising efforts began in January 2009 and the rental unit was re-rented on March 1, 2009 for a monthly rent of \$1,750.00 for a fixed term set to expire July 31, 2009. However the rental unit was found abandoned by the subsequent tenants April 30, 2009. The landlord received no rent for May 2009 but re-rented the unit starting June 2009 for a one-year term for the monthly rent of \$1,900.00.

The landlord's agent acknowledged that the tenant that abandoned the rental unit in April 2009 has not been pursued for the unpaid rent for May 2009. The agent argued that the loss of rent originates from the breach of the fixed term by the tenants of this dispute. The tenants did not agree that they are responsible for loss of rent stemming from a subsequent tenant abandoning the rental unit.

The landlord submitted that at the beginning of the tenancy the propane tank was full and that the tenants were responsible for ensuring the tank was left full at the end of the tenancy. The tenants submitted that the tenancy agreement did not specify that the tenants were responsible for refilling the propane tank. Both parties acknowledged that the tenants did not fill the propane tank at the end of the tenancy and the landlord had mentioned it in an email sent subsequent to the signing of the tenancy agreement.

Documentary evidence provided and considered in this decision includes: proof of service upon the tenants; the tenancy agreement signed by the parties; the 10 Day Notice to End Tenancy for Unpaid Rent issued January 29, 2009; email communication between the parties; advertising invoices; and, subsequent tenancy agreements.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of the evidence before me, I find as follows.

The tenants violated the terms of their tenancy agreement and the Act by failing to pay rent when due for November 2008 and January 2009. I am satisfied the landlords are entitled to recover this unpaid rent from the tenants.

I also find that the tenants violated the tenancy agreement by ending the tenancy earlier than September 30, 2009. I am satisfied the landlord advertised for replacement tenants in a timely manner and mitigated their loss of rent. I find that the tenants' violation of the tenancy agreement caused the landlord to incur a loss of rent for the month of February 2009 in the full amount. Further, upon re-renting the unit the landlord suffered a loss for the difference between the rent payable by the subsequent tenants and the rent the tenants were contractually obligated to pay under the tenancy agreement. However, I do not hold the tenants responsible for the loss of one-full month of rent for the month of May 2009 since the landlord has not attempted to mitigate the loss of \$1,750.00 by pursuing the tenant that abandoned the unit.

With respect to the propane costs, I find the landlord failed to provide evidence to verify the amount claimed as set out in the above criteria for damages. Therefore, I dismiss this portion of the landlord's claim.

I award the landlord the cost of advertising as the landlord verified the claim and because I am satisfied that the loss is a result of the tenants' breach of the fixed term tenancy agreement.

I award the filing fee to the landlord. I authorize the landlord to retain the security deposit, pet deposit and accrued interest in partial satisfaction of the rent owed to the landlord. I provide the landlord with a Monetary Order calculated as follows.

<u>Item</u>	<u>Amount claimed</u>	<u>Amount awarded</u>
January 2009 rent	2,350.00	2,350.00
February 2009 rent	2,350.00	2,350.00
March 2009 rent	600.00	600.00
April 2009 rent	600.00	600.00
May 2009 rent	2,350.00	600.00
June 2009 rent	450.00	450.00
July 2009 rent	450.00	450.00
August 2009 rent	450.00	450.00
September 2009 rent	<u>450.00</u>	<u>450.00</u>
Total loss of rent	\$ 12,400.00	\$ 10,650.00
Advertising costs	74.27	74.27
Propane fill cost	380.43	Nil
Filing fee	<u>100.00</u>	<u>100.00</u>
Total claim	\$ 12,954.70	\$ 10,824.27
Less: security deposit and interest		(1179.43)
Less: pet deposit and interest		<u>(1179.43)</u>
Monetary Order		\$ 8,465.41

The landlord must serve the Monetary Order upon the tenants and may enforce in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been authorized to retain the security deposit and pet deposit and accrued interest in partial satisfaction of the rent awarded the landlord. The landlord has also been provided a Monetary Order for the balance of \$8,465.41 to serve upon the tenants.

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: March 03, 2011.

Residential Tenancy Branch