



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC FF

Preliminary Issues

After reviewing the Landlord's application for dispute resolution I note that in the details of the dispute filed by the Landlord they had indicated their claim was for unpaid rent for December, January, and February as the Tenant had vacated the property and ended a fixed term tenancy. The Landlords also provided a Monetary Order worksheet which states they are seeking the loss of rent, bank charges and the administration fee.

Based on the aforementioned I find the Landlord was seeking loss of rent not unpaid rent, bank charges and administration fees; therefore I amend the Landlord's application to include a request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; pursuant to section 64 (3)(c) of the Act that stipulates the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?

2. If so, have the Landlords met the burden of proof to obtain a Monetary Order as a result of that breach, pursuant to sections 7 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The following facts were not in dispute and each party provided affirmed testimony during the teleconference hearing which confirmed the following:

- The parties entered into a written fixed term tenancy agreement that began on March 1, 2011 and was set to switch to either a month to month or another fixed term tenancy agreement after February 28, 2012; and
- Rent was payable on the first of each month in the amount of \$1,050.00; and
- The Tenants paid \$525.00 as the security deposit on March 1, 2011; and
- On September 30, 2012 the Tenants provided the Landlord with written notice of their intentions to end their fixed term lease as of October 31, 2011; and
- The Tenants remained in possession of the unit until November 2, 2011; and
- The parties attended the move in condition inspection on February 28, 2011 and the move out condition inspection on November 2, 2011; and
- The Tenants provided their forwarding address during the November 2, 2011 inspection.

The Landlords affirmed they continue to advertise the unit however they have not found new tenants and the unit remains vacant. They are seeking to recover the lost rent for the remainder of the fixed term tenancy for December 2011, January 2012, and February 2012. They are also seeking to recover the \$25.00 bank charge they incurred for going over their bank limit because they were expecting the Tenants would continue to pay the rent as provided for in section 3 of their tenancy agreement addendum. They are also seeking to recover the \$525.00 administration fee as provided for under number 16 of the tenancy agreement addendum as they have spent a lot of time on telephone calls, paperwork, and dealing with the Tenants to collect on their lease agreement and efforts to get the unit re-rented.

Upon clarifying the tenancy agreement signatures the Tenant stated initially that he was looking at his e-mailed copy which only displayed his signatures and later he found the evidence copy which included the Landlord's Agent's signature. The Tenant affirmed he entered into a fixed term lease and stated that he was of the opinion that he was within his rights to end the lease because he felt the Landlord breached section 11 of the tenancy agreement by charging an additional \$150.00 per month for their guest. He

confirmed there were to be two occupants of the rental unit and that he entered into an agreement to pay the Landlord an additional \$150.00 for three months their guest occupied the unit. He explained that their Company rented the unit for staff to occupy and that there was two full time staff and one staff who was required to occupy the unit on a temporary three or four month basis which he deems as being a guest.

The Tenant advised that he did not seek a remedy for the additional occupant charge through the *Residential Tenancy Branch* as he felt he could resolve the issue by ending his tenancy.

The Landlord pointed out that in the e-mail evidence provided by the Tenants it clearly indicates they were in agreement to pay the additional charge for the additional occupant. He stated that a guest does not move in with a bed and other furniture and it was reasonable to charge the additional amount as the tenancy agreement included utilities and rent was designed to incorporate utilities used by two occupants not three. The Landlord noted that there was another e-mail in the Tenant's evidence dated June 1, 2011 which states "Starting today, there will only be two tenants in the suite as agreed".

Analysis

I have carefully considered the aforementioned and all of the documentary evidence submitted by each party, pursuant rule # 11.5 of the *Residential Tenancy Branch Rules of Procedure*. The evidence included, among other things, copies of: the tenancy agreement; addendum to tenancy agreement, move in and move out condition inspection reports, copies of advertisements listing the unit for re-rent, and written communication between the parties.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

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

In this case the evidence supports the parties entered into a fixed term tenancy agreement that was not set to expire until February 28, 2012. The tenancy ended November 2, 2011, when the Tenants vacated the property pursuant to section 44(1)(d) of the Act and the Tenants paid for the full month of November 2011 rent.

Based on the aforementioned I find the Tenants breached section 45(2)(b) of the Act by ending the tenancy prior February 28, 2012, the specified end date of the tenancy. The Landlord has attempted to mitigate his losses by advertising the unit for re-rent as soon as early as October 7, 2011 and continues to advertise. Despite the Landlord's efforts the unit remains vacant and the Landlord has suffered a loss of three month's rent for the remainder of the fixed term. Accordingly, I find the Landlord has met the burden of proof, as listed above, and I award them loss of rent for December 2011, January 2012, and February 2012, in the amount of **\$3,150.00** (3 x \$1,050.00).

The parties signed the tenancy agreement and the tenancy agreement addendum which included a term providing the Landlord to charge a \$25.00 bank fee for bank charges and an Administration fee or liquidated damages clause of \$525.00 in the event the Tenants broke the fixed term lease.

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.

I accept the Landlord's testimony that this amount is reasonable as he has incurred a loss in attempting to work this matter out with the Tenants through numerous telephone calls, paper work, filing the claim, and advertising costs and time to show the unit in attempts to re-rent the unit. Accordingly I find the Landlords have met the burden of

proof and I award them **\$550.00** for the bank fee and administration or liquidated damages charge (\$25.00 + \$525.00).

The Landlords have been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Loss of Rent December 2011, January 2012, February 2012,	\$3,150.00
Administrative Liquidated Damages & Bank Charges	550.00
Filing Fee	<u>50.00</u>
SUBTOTAL DUE TO THE LANDLORD	\$3,750.00
LESS: Security Deposit \$525.00 + Interest 0.00	<u>-525.00</u>
Offset amount due to the Landlord	<u>\$3,225.00</u>

Conclusion

The Landlord's decision will be accompanied by a Monetary Order in the amount of **\$3,225.00**. This Order is legally binding and must be served 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: April 25, 2012.

Residential Tenancy Branch