



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order to be allowed to serve documents or evidence in a different way than required by the *Act* pursuant to section 71; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 10:09 a.m. in order to enable him to connect with this hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord's agent testified that his attempt to send the tenant a copy of the dispute resolution hearing package by registered mail was unsuccessful. The landlord's agent testified that he handed the tenant a copy of the dispute resolution hearing package on February 19, 2012. He said that the tenant signed a document acknowledging that he received the hearing package on that date. I asked the landlord's agent (the landlord) to send a fax of this document to me before the end of the working day on April 5, 2012. I received this fax confirmation of the landlord's service of the hearing package to the tenant shortly after the hearing. I am satisfied that the landlord served the tenant with the dispute resolution hearing package in accordance with the *Act*.

Since the landlord had successfully served the dispute hearing package to the tenant, the landlord withdrew the application for substituted service of documents in a different way than required by the *Act*. Although in the Details of the Dispute section of the landlord's application, the landlord had requested an Order of Possession, the landlord testified that he was not seeking an Order of Possession as the tenant abandoned the rental unit at some point prior to February 2, 2012.

The landlord referred to some written and photographic evidence that he had submitted that had not been received by the Residential Tenancy Branch (RTB). He also said that he had recently received an additional utility bill covering a period after the application for dispute resolution was submitted. Under these circumstances, I allowed the landlord to submit the additional utility bill and other material provided to the RTB on a previous occasion.

During the course of the hearing, the landlord sought permission to withdraw the application for a monetary award for damage arising out of this tenancy. He did so as it became apparent that the application for a monetary award for damage had been submitted prior to the landlord gaining access to the rental unit and realizing the full extent of the damage caused by the tenant. He said that he had a number of bills and expenses that had arisen after the premises were abandoned by the tenant. He said that he intended to submit a new comprehensive application for a monetary award for damage caused during this tenancy which would include all items damaged and receipts obtained for the repair of the tenant's damage. Given the changed circumstances arising out of the landlord's possession of the rental premises after the application for dispute resolution was submitted, I agreed to the landlord's request to withdraw his application for a monetary award for damage arising out of this tenancy. The landlord is at leave to reapply for damage arising out of this tenancy.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent, utilities and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy commenced on July 1, 2009 as a one year-fixed term tenancy. At the expiration of the initial term, this converted to a periodic tenancy. By the end of this tenancy, monthly rent was set at \$1,600.00, payable in advance on the first of each month, plus utilities. The landlord continues to hold the tenant's \$800.00 security deposit paid on June 5, 2009.

The landlord testified that no joint move-in condition inspection was conducted at the commencement of this tenancy. He said that the landlord did inspect the rental premises four days after the tenancy began but no copy of a report of that inspection was provided to the tenant. He testified that no joint move-out condition inspection was scheduled or conducted as the tenant abandoned the rental premises. He testified that

the landlord did not prepare a move-out condition inspection report at the end of this tenancy, although he did take some photographs at that time.

The landlord's original application for a monetary award of \$17,400.00 included \$12,250.00 in unpaid rent, \$1,816.11 in unpaid utilities and \$3,333.89 for damage to the premises. As noted above, the landlord withdrew the application for damage, but requested that the additional utility cost of \$219.17, set out in the most recent utility bill, be considered as part of the landlord's current application for a monetary award.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

Based on the landlord's undisputed written evidence, I find that the landlord is entitled to a monetary award of \$9,050.00 for unpaid rent due as of January 1, 2012.

The landlord has also applied for a monetary award for loss of rent for February and March 2012. The landlord's agent said that the owner of the property and the agent have been attempting to clean and repair the premises since they gained possession of the premises and prepare it for rental to new tenants. He said that advertisements on a number of local rental websites, flyers in local stores and other advertising measures have proven unsuccessful in locating a new tenant for these premises. He said that they have reduced the requested monthly rental to \$1,400.00, to no avail.

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. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for March 2012, the tenant would have needed to provide his notice to end this

tenancy before February 1, 2012. Section 52 of the *Act* requires that a tenant provide this notice in writing.

Based on the undisputed evidence before me, I find that the tenant did not comply with the provisions of section 45(1) of the *Act* and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing. 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 his tenancy agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for February or March 2012. 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.

Based on the evidence presented, I accept that the landlord has attempted to the extent that was reasonable to re-rent the premises for February and March 2012. As such, I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the tenants' loss.

As the tenant remained in the rental unit for part of February 2012 and abandoned this tenancy without giving proper written notice to do so, I find that the landlord is entitled to a further monetary award of \$1,600.00 for unpaid rent for February 2012 and \$1,600.00 for the landlord's loss of rent for March 2012.

Based on the landlord's undisputed utilities receipts entered into written evidence, I allow the landlord a monetary award of \$1,816.11 for unpaid utilities for 2010 and 2011. In doing so, I accept the landlord's testimony, supported by written documentation, that \$957.55 was added to the landlord's property tax bill for the tenant's non-payment of utilities for 2010. The landlord provided a utility bill of \$858.56 for 2011 which by now has been added to the landlord's next property tax bill. In addition to the \$1,816.11 monetary award for unpaid utilities, I allow the landlord a further monetary award of \$219.17 for unpaid utilities owing from 2012.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

Since the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee from the tenant.

Conclusion

I issue a monetary award in the landlord's favour in the following terms which allows the landlord to recover unpaid rent and utilities, loss of rent, and the filing fee for this application and to retain the tenant's security deposit:

| Item | Amount |
|---|--------------------|
| Unpaid Rent as of January 2, 2012 | \$9,050.00 |
| Unpaid February 2012 Rent | 1,600.00 |
| Loss of Rent March 2012 | 1,600.00 |
| Unpaid Utilities 2010 and 2011 | 1,816.11 |
| Unpaid Utilities 2012 | 219.17 |
| Less Security Deposit | -800.00 |
| Recovery of Filing Fee for this application | 100.00 |
| Total Monetary Order | \$13,585.28 |

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.

The landlord's applications for a substituted service order and for a monetary award for damages arising out of this tenancy are withdrawn. The landlord has leave to reapply for a monetary award for damages.

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 05, 2012

Residential Tenancy Branch