



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, MNSD, MNDC, FF

Introduction

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

- an Order of Possession for the tenant's breach of a material term of the residential tenancy agreement pursuant to section 55;
- a monetary order for unpaid rent 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; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The parties agreed that on January 10, 2012 the tenant sent the landlords an email advising that he was intending to end his tenancy by January 31, 2012. The tenant confirmed he received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on February 17, 2012. I am satisfied that the parties have received the above documents and that the landlords served the tenant with their dispute resolution hearing package and written evidence in accordance with the *Act*.

At the hearing, the parties agreed that the tenant vacated the rental unit by January 31, 2012, at which time the landlords gained vacant possession of the rental unit. Landlord GD (the landlord) withdrew the landlords' application for an end to this tenancy and an Order of Possession.

The landlord testified that the landlords had not received the tenant's late written evidence that was received by the Residential Tenancy Branch (RTB) on April 13, 2012. The tenant testified that he had not sent the landlords a copy of this evidence. As the tenant chose not to send a copy of his written evidence to the landlords, I have not considered this material in reaching my decision.

Issues(s) to be Decided

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

Background and Evidence

This one-year fixed term tenancy commenced on November 1, 2011. Monthly rent was set at \$675.00, payable in advance on the first of each month. According to the terms of the residential tenancy agreement entered into written evidence by the landlords, the tenant was responsible for paying 50% of the utility costs for this two unit rental property. The landlords continue to hold the tenant's \$340.00 security deposit paid on November 1, 2011. The parties confirmed that the tenant vacated the rental unit on January 31, 2012, at which time possession transferred to the landlords.

The parties agreed that they participated in a joint move-in condition inspection of the rental premises on November 1, 2011 and a joint move-out condition inspection of the rental premises on January 31, 2012. The landlords entered into written evidence a copy of the condition inspection reports arising from those inspections, which were signed by the tenant and copied to him.

The landlords' application for a monetary award of \$2,505.00 included:

Item	Amount
Unpaid January 2012 Rent	\$5.00
Loss of Rent for February 2012	675.00
Loss of Rent for March 2012	675.00
Damage	100.00
Liquidation Damages	1,000.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award Requested	\$2,505.00

At the hearing, the landlord lowered the landlords' requested monetary award by \$337.50 to reflect their rental of the premises to a new tenant who commenced paying rent on March 15, 2012. The landlord also asked for recovery of the landlords' mailing costs associated with their application. I noted that only their filing fee is recoverable under the *Act* and that their mailing costs are not recoverable from the tenant.

The tenant referred to his written evidence in stating that he had hoped to obtain his own monetary award of \$4,115.00. As he has made no application for dispute resolution to seek a monetary award for losses or a retroactive reduction in rent for his tenancy, I advised him that these issues are not before me. He gave oral testimony that he and his former roommate vacated the rental premises because the landlords refused to repair items that were deficient. He testified that the landlords refused to install a bedroom door on his roommate's room. He also testified that there was no exhaust fan in the bathroom in the rental unit and the landlords refused to install one. The tenant testified that the landlords also refused to provide an exhaust fan in the stove of this rental unit. He also said that the rental unit was very cold and that he disagreed that he should have been held responsible for 50% of the utilities as the other rental unit in the property was larger than his and should have been paying more for utilities.

The landlord testified that the tenant knew that there was no door on one of the bedrooms when he committed to this fixed term tenancy and told the landlords that this did not present a problem for him. The landlord also said that some of the issues noted by the tenant had not been raised with the landlords prior to the end of this tenancy.

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.

As discussed at the hearing, the application before me is one submitted by the landlord for the recovery of unpaid rent, losses and damage arising out of this tenancy. If the tenant has claims of his own, he needs to apply for dispute resolution himself and provide the details of his claim to both the RTB and the landlords.

I find that there is undisputed evidence that the tenant was in breach of his fixed term tenancy agreement because he vacated the rental premises prior to the October 31, 2011 date specified in that agreement. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*.

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 loss that results from that failure to comply. At the hearing, the tenant confirmed that he owed the landlords \$5.00 for unpaid rent from January 2012. He also confirmed that he did not pay any rent for February or March 2012, the two months claimed by the landlords.

Section 45(1) of the *Act* requires a tenant, even in a month-to-month (periodic) tenancy, to give 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 February 2012 even in a periodic tenancy, the tenant would have needed to provide his notice to end this tenancy before January 1, 2012. Section 52 of the *Act* requires that a tenant provide this notice in writing; email does not satisfy this requirement.

For these reasons, 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. 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.

At the hearing, the landlord testified that he commenced advertising the availability of the rental unit in January 2012. He gave undisputed testimony that the tenant was aware of these efforts as he permitted some of the prospective new tenants to view the rental unit before the tenant vacated the rental unit at the end of January 2012. The landlord testified that he was able to rent the premises to a new tenant as of March 15, 2012 on a six-month fixed term tenancy for \$680.00 per month. Based on this undisputed evidence, I accept that the landlords did attempt 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 his duty under section 7(2) of the *Act* to minimize the tenants' loss.

I allow the landlords a monetary award of \$5.00 for unpaid rent for January 2012, and the landlords' claim for loss of rent of \$675.00 for February 2012. I find that the landlords' claim of \$337.50 for loss of rent for one-half of March 2012 is to be reduced by \$30.00 (6 months @ \$5.00 per month) for the \$5.00 extra in rent that the landlords are scheduled to receive from the new tenants for the six-months of the new tenancy.

I recognize that the residential tenancy agreement called for the imposition of a \$1,000.00 liquidated damages charge against the tenant if the tenant ended the tenancy agreement before October 31, 2012. However, in this case, the landlords submitted verifiable claims in excess of the liquidated damages charge for their losses in rent

arising out of the tenant's premature ending of this tenancy. The landlords did not provide any evidence to demonstrate that they incurred actual losses in excess of those claimed for lost rent for February and March 2012. I dismiss the landlords' claim for liquidated damages without leave to reapply as the landlords have not demonstrated their entitlement to a monetary award for this item in addition to their claims for loss of rent for February and March 2012.

At the hearing, the landlord testified that the \$100.00 claim for damage was for general cleaning of the rental unit after the tenant vacated. As the landlord has not provided any receipts to show actual losses arising from damage to the rental unit, I dismiss this portion of the landlords' claim without leave to reapply.

I allow the landlords to retain the tenant's security deposit plus interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlords have been successful in their application, I allow them to recover their filing fee from the tenant.

Conclusion

I issue a monetary award in the landlords' favour in the following terms which allows the landlords to recover unpaid and lost rent, to recover their filing fee and to retain the tenant's security deposit:

Item	Amount
Unpaid January 2012 Rent	\$5.00
Loss of Rent for February 2012	675.00
Loss of Rent for March 2012 Less Partial Recovery of Rent from New Tenants (\$337.50 - \$30.00 = \$307.50)	307.50
Less Security Deposit	-340.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$697.50

The landlords are 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*.

Dated: April 18, 2012

Residential Tenancy Branch