



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

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

- a monetary order for unpaid rent 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 this tenancy ended on March 30, 2012 on the basis of a February 18, 2012 email sent by the tenant advising the landlords that she was intending to end her tenancy before the expiration of her fixed term tenancy agreement. The tenant confirmed that she received a copy of the landlords' dispute resolution hearing package sent by registered mail on May 3, 2012. I am satisfied that the above documents were served to one another by the parties.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent? 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 this application from the tenant?

Background and Evidence

This one-year fixed term tenancy commenced on October 1, 2011. Monthly rent by the time the tenant vacated the rental unit on March 30, 2012 was set at \$800.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$400.00 security deposit paid on September 10, 2011 and \$200.00 pet damage deposit paid on September 3, 2011.

The landlords' applied for a monetary award of \$1,600.00. This included the landlords' claim for recovery of unpaid rent for April and May 2012. The male landlord who attended this hearing (the landlord) testified that he has located a new tenant who will

be occupying the rental unit as of July 1, 2012 at a reduced monthly rent of \$750.00 per month. The landlord said that the landlords had lost three months of rent as a result of the tenant's premature ending of her fixed term tenancy that was not scheduled to end until September 30, 2012. He made an oral request to increase the landlords' requested monetary award to \$2,400.00 to reflect the landlord's lack of success in renting the premises to another tenant for June 2012.

The landlord gave undisputed testimony that he placed advertisements on two popular rental websites as soon as the landlords received the tenant's February 18, 2012 advising them that she was planning to move at the end of March 2012. The tenant confirmed the landlord's claim that a number of showings were arranged by the landlords prior to the end of her tenancy. The landlord said that he had approximately 50 people view the rental unit.

The landlord testified that he advised the tenant at the commencement of her fixed term tenancy, as per his usual practice, that she would need to give two month's notice if she were planning to end her tenancy early and avoid incurring costs for unpaid rent for the remainder of her fixed term. He said that he is usually able to find a new tenant if given this notice and that he lets the tenants know that he will not attempt to recover unpaid rent for the remainder of the fixed term if this two month notice is given. He said that the tenant's February 18, 2012 notice did not give him the requested two month notice. The tenant confirmed that the landlord had advised her of his request for a two-month notice if she were planning to end her tenancy early. The parties agreed that the tenant paid her full March 2012 rent. The tenant testified that the maximum the landlord should be allowed as a monetary award should be one month for his loss of rent for April 2012. She claimed that this would fulfill the terms of their oral agreement.

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. I find that the tenant was in breach of her fixed term tenancy agreement because she vacated the rental premises prior to the September 30, 2012 date specified in that agreement. As such, the landlords are entitled to compensation for losses they incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*. In coming to this determination, I have taken into account the testimony of the landlord and the tenant with respect to the landlord's practice of requiring two month's notice to avoid the tenant's responsibility for the landlords' loss of rent for the remaining portions of the fixed term tenancy agreement. I find that the tenant was the first to breach the terms of that oral agreement when she failed to provide the two-month notice. The emails

exchanged between the parties provide no indication that the landlord agreed to a mutual end to this tenancy. Rather, I find that the landlord simply responded to the tenant to clarify the date when she would be ending her tenancy and vacating the rental unit. I find that the landlord's emails consistently informed the tenant that he would return her security deposit in full **if** he were able to locate a new tenant and mitigate the landlords' loss of rent for this rental unit.

There is undisputed evidence that the tenant did not pay any rent after March 2012, and as such breached the terms of her fixed term tenancy agreement and the *Act*. 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.

I view nothing in the written evidence exchanged between the parties or the oral testimony given at this hearing that would convince me that the landlords failed to discharge their duties in trying to mitigate the tenant's losses. The tenant was aware that she had a fixed term tenancy agreement that committed her to pay monthly rent of \$800.00 to the landlords until the end of this tenancy. The tenant testified that the landlord:

- could have suggested to her that she try to locate a new tenant;
- could have suggested that she might want to stay in the rental unit; or
- could have suggested that she provide a partial payment for the remainder of her fixed term tenancy to make the premises more attractive to potential renters.

I find little merit to the tenant's assertion that the landlord should have done more to alert her to her potential responsibility for his loss of rent. The landlords bear no responsibility in identifying the above options when the tenant breached both the terms of her oral agreement to provide two month's notice and her fixed term tenancy agreement. Based on the landlord's undisputed evidence regarding the efforts he has taken to find another tenant for this rental unit, I am fully satisfied that the landlords have discharged their responsibilities under section 7(2) of the *Act*.

The tenant was not aware until this hearing that the landlords had encountered further losses beyond the \$1,600.00 identified in the landlord's original application for dispute resolution. Two month's notice was also a term used in the landlord's practice and the oral agreement that required the tenant to provide two month's notice to end a fixed term tenancy early. The principles of natural justice require a respondent at a proceeding to know the case against her and to have been given an adequate opportunity to respond to that case. Under these circumstances, I find that the tenant was not properly advised of the landlords' intention to seek an additional monetary

award at this hearing. For these reasons, I find that the landlords are entitled to a monetary award of \$1,600.00, the amount of the requested monetary award identified in the landlords' written application for dispute resolution. I find that the landlord's request for an additional monetary award beyond the amount stated in the landlords' original application is not properly before me in this application.

I allow the landlords to retain the tenant's security and pet damage deposits plus applicable 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 find that the landlords are entitled to recover their filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlords' favour under the following terms which allows the landlords to recover unpaid rent and their filing fee and to retain the tenant's security and pet damage deposits:

Item	Amount
Unpaid April 2012 Rent	\$800.00
Unpaid May 2012 Rent	800.00
Less Security & Pet Damage Deposits	-600.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,050.00

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: June 29, 2012

Residential Tenancy Branch