



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (the "Act"). The landlord applied for a monetary order for unpaid rent, authority to retain the tenants' security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for recovery of the filing fee.

The tenants and the agents for the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing both parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Both parties stated that they received the evidence packages from the other party prior to the hearing. I find the parties were served in accordance with the *Act*.

Issue(s) to be Decided

- Should the landlord be granted a monetary order for unpaid rent, or money owed or compensation for damage or loss?
- Should the landlord be granted authority to retain all or part of the security deposit?
- Should the landlord recover the filing fee?

Background and Evidence

The landlord submitted a copy of the fixed term tenancy agreement as evidence, which began on September 15, 2011 and was to expire on August 31, 2012. The agreement indicates rent was due on the first day of each month in the amount of \$1,695.00. The landlord testified that the tenants paid \$847.50 as a security deposit at the start of the tenancy.

The tenants testified that they sent an e-mail to the landlord on January 4, 2012 indicating that they would be vacating the rental unit as of January 31, 2012. In the e-mail submitted as evidence, the tenants state that while they love the apartment, they want to live closer to the water, restaurants, stores, and entertainment. A letter dated January 31, 2012, was also submitted by the tenants, claiming that they felt threatened by the landlord and that an agent for the landlord insisted that the tenants turn away potential renters who had children. This letter was submitted on the date the tenants vacated the rental unit. In the letter, the tenants offer to provide a cheque for \$847.50 for ½ of February rent in addition to the security deposit as a “reasonable solution”.

The fixed term tenancy agreement was set to expire on August 31, 2012. The landlord was unable to secure a new tenant until May 15, 2012. The landlord's monetary claim is for \$4,587.50, consisting of the following:

Loss of February 2012 rent	\$1,695.00
Loss of March 2012 rent	\$1,695.00
Loss of April 2012 rent	\$1,695.00
Loss of ½ of May 2012 rent	\$847.50
Loss of ½ May 2012 rent differential of \$100.00* (*\$1,695.00 original rent – new tenant renting for \$1,595.00 = \$100 rent differential)	\$50.00
Loss of June 2012 rent differential	\$100.00
Loss of July 2012 rent differential	\$100.00
Loss of August 2012 rent differential	\$100.00
Subtotal	\$6,282.50
Less \$847.50 security deposit (no interest accrued)	(\$847.50)
Less cheque received January 31, 2012 from tenants	(\$847.50)
TOTAL	\$4,587.50

The agents for the landlord stated that they received the forwarding address of the tenants on February 1, 2012, and filed their application to claim towards the security deposit within 15 days, on February 9, 2012.

The agents for the landlord testified that they both made many attempts to secure a new tenant for the rental unit. Their efforts included the posting of ads on four popular

internet sites, responding to e-mails from prospective tenants, advertising on their company website and the posting of a sign outside of the rental unit building.

The tenants provided 1 screen shot as evidence that they state was from a search they conducted on March 4, 2012. The tenants testified that they could not find the rental unit being advertised when they printed off the screen shot on March 4, 2012. The landlord responded by stating that certain websites don't return all the search results for an area depending on the internet browser that is used when searching online.

The agents for the landlord testified that they renewed their ads whenever possible on the popular internet sites. Those dates included:

- February 2, 2012
- February 22, 2012
- March 7, 2012
- March 14, 2012
- March 26, 2012
- April 3, 2012
- April 12, 2012

The tenants testified that they felt the landlord should have made more of an effort to advertise the rental unit, to mitigate their losses. When asked if the tenants did anything to assist with finding a new tenant, the tenants stated that prior to vacating the rental unit, they posted ads and updated them regularly, but were not successful in finding a new tenant to replace them on the fixed term tenancy agreement.

The agents for the landlord provided documentary evidence indicating that they reduced the monthly rent from \$1,695.00 to \$1,595.00 on April 13, 2012 in an effort to attract a new tenant and to assist in mitigating the loss to both parties. The agents for the landlord stated that they showed the rental unit three times per week on average and had 1-2 showings on the weekend on average, before securing a new tenant who moved in on May 15, 2012. One agent stated that it would have been a lot less work for the agents to rent the rental unit, so they were motivated to secure a new tenant as soon as possible, however, they were not successful in securing a new tenant until the middle of May 2012.

The agents for the landlord testified that they manage 3 buildings and a total of 63 units. In addition, the agents stated that they had several interested parties in the rental unit however, some had pets and no pets are allowed in this rental unit.

The agents for the landlord submitted an evidence package of 139 pages and the tenants submitted an evidence package of 25 pages. The evidence packages of both parties have been reviewed and considered in my Decision. The evidence packages include but are not limited to; emails, letters, condition inspection reports, agreements, internet search results, advertising including rent reduction, and screen captures.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Notice to vacate by the tenants – The email sent by the tenants on January 4, 2012 to the landlord is not an authorized way to end a fixed term tenancy pursuant to section 45 of the *Act*. In the tenants' letter, they state that although they love the apartment, they want to live closer to the water, restaurants, stores and entertainment.

In regard to the letter from the tenants dated January 31, 2012; section 45(3) of the *Act* states:

Tenant's notice

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

The tenants' letter dated January 31, 2012, was not provided to the landlord during the tenancy, it was provided on the day the tenants were vacating the rental unit. As a result, the tenants provided no opportunity for the landlord to respond or correct the alleged material breach as required under section 45(3) of the *Act*.

Therefore, I find the tenants breached a fixed term tenancy and did not end the fixed term tenancy in accordance with the *Act*. As the letter from the tenants indicates an offer by the tenants to provide a cheque for \$847.50 for ½ of February rent in addition to the security deposit as a "reasonable solution", I find the tenants were releasing their security deposit as of that date to the landlord for rent owed. I make no findings

regarding the allegations set out in the tenant's letter as they did not file an application for dispute resolution and the *Act* does not permit the tenants to make a claim through the landlord's application for dispute resolution.

Efforts by landlord to secure a new tenant and mitigate loss – The agents for the landlord have testified and provided documentary evidence of their attempts to advertise the rental unit, respond to prospective tenants, show the rental unit and reduce the rent to secure a new tenant. On April 13, 2012, the agents for the landlord reduced the rent from \$1,695.00 to \$1,595.00 in an effort to attract a new tenant and mitigate the loss to both parties. This approach appears to have been successful as a new tenant moved into the rental unit on May 15, 2012.

Section 7 of the *Act*, states:

Liability for not complying with this Act or a tenancy agreement

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The tenants provided a screen shot indicating that they could not see the rental unit being advertised on March 4, 2012 based on the search results shown on the screen shot. I find that one screen shot is not an accurate account of whether the rental unit was being advertised. For the tenants to be successful with such an argument, I would expect at the very least, screen shots from multiple websites on an ongoing basis to support their position.

Given the above, I find the agents for the landlord were advertising the rental unit on a regular basis, were regularly showing the unit, and reduced the rent by \$100.00 on April 13, 2012, which minimized the loss to both parties, as required by section 7 of the *Act*.

Claim for loss of rent – The tenants breached a fixed term tenancy by vacating the rental unit on January 31, 2012. The tenants signed a fixed term tenancy agreement which was to expire on August 31, 2012. The landlord, therefore, suffered a loss of rent for the months of February, March, April and half of May, 2012.

Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and I award the landlord a monetary claim of **\$6,282.50** consisting of the loss of rent for the months of February, March, April and half of May; the rent differential of \$50.00 for half of May 2012, and \$100.00 for the months of June, July and August, 2012, as the landlord had to reduce the rent in order to secure a new tenant.

The landlord has succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$100.00**.

The tenants' security deposit of \$847.50 has accrued no interest since August 2011.

Monetary Order – I find that the landlord is 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 as follows:

Loss of February 2012 rent	\$1,695.00
Loss of March 2012 rent	\$1,695.00
Loss of April 2012 rent	\$1,695.00
Loss of ½ of May 2012 rent	\$847.50
Loss of ½ May 2012 rent differential of \$100.00* (*\$1,695.00 rent – new tenant renting for \$1,595.00 = \$100)	\$50.00
Loss of June 2012 rent differential	\$100.00
Loss of July 2012 rent differential	\$100.00
Loss of August 2012 rent differential	\$100.00
Filing fee	\$100.00
Subtotal	\$6,382.50
Less \$847.50 security deposit (no interest accrued)	(\$847.50)
Less cheque received January 31, 2012 from tenants	(\$847.50)
TOTAL	\$4,687.50

Conclusion

I find that the landlord has established a total monetary claim of **\$6,382.50** as indicated above. I order that the landlord retain the security deposit of \$847.50 in partial

satisfaction of the claim and accounting for the cheque from the tenants in the amount of \$847.50, paid on January 31, 2012, I grant the landlord a monetary order under section 67 for the balance due of **\$4,687.50**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 4, 2012

Residential Tenancy Branch