



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

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

- 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 and pet damage deposits 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 tenant confirmed that on June 4, 2012, he sent one of the landlords a text message advising that he planned to end the tenancy by August 1, 2012. The tenant confirmed that he received a copy of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) posted on his door on August 24, 2012. The tenant also confirmed that he received a copy of the landlords' dispute resolution hearing package sent by the landlords by registered mail on August 31, 2012. I am satisfied that the landlords served the 10 Day Notice, their dispute resolution hearing package and their written evidence in accordance with the *Act*.

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 and pet damage deposits 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 fixed term tenancy commencing on August 14, 2011 was scheduled to end on August 31, 2012. Monthly rent was set at \$1,600.00, payable in advance on the first of

each month. The landlords continue to hold the tenant's \$800.00 security deposit and \$800.00 pet damage deposit, both paid on July 31, 2011.

The standard terms of section 2 of the Residential Tenancy Agreement (the Agreement) was altered by the parties to specify that "At the end of this fixed length of time...(i) the tenancy may continue for another fixed length of time." The parties did not enter any evidence that would suggest that there was agreement at the end of this tenancy to another fixed term tenancy. However, there was also no indication in section 2(ii) of the Agreement that the parties agreed that this tenancy ended and the tenant must move out by August 31, 2012, the end date to this fixed term tenancy.

The landlords' application for a monetary award of \$3,250.00 included requests for unpaid rent or loss of rent of \$1,600.00 for each of August 2012 and September 2012. The landlords also applied for \$50.00 to replace the locks at the end of this tenancy because they maintained that the tenant did not return all of the door keys or the storage locker keys at the end of this tenancy. The tenant claimed that he left two sets of keys to the rental unit and the storage locker keys in a Ziploc container next to the sink at the end of this tenancy. The landlords said that they received no Ziploc container but did receive one set of keys for the rental unit from the tenant.

Analysis

The tenant confirmed that he resided in the rental unit for all of August 2012 and did not make any rent payments for that month. He asked that his security and pet damage deposits be applied to his rent for August 2012. Based on the undisputed evidence before me with respect to the landlords' claim for unpaid rent for August 2012, I find that the landlord is entitled to a monetary award of \$1,600.00 for August 2012.

The landlords also asked for compensation for their loss of rent for September 2012 "as the unit still needed painting, cleaning, advertising, and showing in order to fetch its rental rate, and suitable tenants...The place needs to look its best, to be able to show, and fetch its rate."

In considering the landlords' application for loss of rent for September 2012, I note that the end date for this fixed term tenancy was set at August 31, 2012, and the tenant yielded possession of the rental unit to the landlords by September 1, 2012. I find that the variation to the standard terms of the Agreement set out in section 2(i) render it difficult to ascertain the true intent of the parties as to whether the tenancy was to continue as a periodic tenancy or was to end on August 31, 2012, if no new fixed term tenancy agreement were established. I find that no new fixed term tenancy agreement was entered into between the parties. The landlords bear responsibility, as the party

drafting the Agreement, for any ambiguity in the interpretation of the terms of the Agreement. For these reasons and in accordance with the legal principle of *contra proferentem*, I find that the tenancy was supposed to end on August 31, 2012, the end date for this fixed term tenancy. The courts have relied on the legal principle of *contra proferentem* when confronted by an ambiguous provision of a contract. This principle establishes that if there is an ambiguous clause in a contract it will be interpreted against the party responsible for drafting the clause. In this case, I find that the principle of *contra proferentem* establishes that the ambiguity in the interpretation of what was to happen at the end of the original fixed term tenancy agreement should be decided in the tenant's favour.

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. There is undisputed evidence that the tenants did not pay any rent for September 2012. In this case, I find that the tenant did remain in the rental unit until September 1, 2012, one day longer than the end date for his fixed term tenancy that expired on August 31, 2012. 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 the 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 find that the landlords have not established that they began advertising the availability of this rental unit until after they received possession of the rental unit. The female landlord testified that she could not remember when she listed the availability of the rental unit on Craigslist, the rental website the landlords use for their rental properties. She said that she thought that it was listed sometime in August, but was not certain. She also maintained that the rental unit was not in "showing condition." This later testimony was consistent with the landlords' written evidence in which it was maintained that the rental unit had to be cleaned, painted and advertised before it could command the full rental value that the landlords were seeking. The landlords also testified that they were reluctant to attempt showing the rental unit to prospective tenants while the tenant remained in the rental unit because they were concerned that he would dissuade prospective tenants from entering into a tenancy because of the problems associated with the occupant of the strata unit above this rental unit.

Based on the evidence presented, I am not satisfied that the landlords attempted to the extent that was reasonable to re-rent the premises for September 2012. Although they were able to re-rent the premises for October 2012, their failure to demonstrate their attempts to mitigate the tenant's loss for any portion of the September 2012 rent to

which they may have been entitled does not convince me that the landlords have discharged their duty under section 7(2) of the *Act* to minimize the tenants' loss. They provided written evidence that they were only willing to show the rental unit to new tenants after the premises were painted. This painting would only have been possible after the tenant vacated the rental unit at the end of his fixed term tenancy agreement as the landlords provided no evidence that they made any attempt to repaint while the tenancy continued. For these reasons, I dismiss the landlords' application to obtain a monetary award for any losses they incurred for unpaid rent for September 2012, without leave to reapply.

Turning to the landlords' application for the reimbursement of expenses incurred to replace keys and locks, there was conflicting evidence submitted by the parties. Based on a balance of probabilities, I am not satisfied that the tenant complied with section 37(2)(b) of the *Act*, which required the tenant to give the landlord all the keys or other means of access that were in his possession at the end of this tenancy. Since the tenant did not hand the keys to the landlord(s) and there is a dispute as to whether the landlords received all of the tenant's keys, I find that the tenant has contravened section 37(2)(b) of the *Act*. However, the landlords' eligibility to obtain compensation for the \$43.67 in rekeying costs identified in the landlord's receipts is limited by section 25 of the *Act*. This section of the *Act* imposes a responsibility on the landlord to ensure that at the start of a new tenancy a landlord must pay all costs associated with altering the locks so that the previous tenant does not retain access to the rental unit. Under these circumstances, I allow the landlord a monetary award of \$5.00 to replace storage room keys.

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 partially successful in this application, I allow them to recover \$25.00 of 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 for August 2012 and the filing fee for this application and for the replacement of keys, and to retain the tenant's security and pet damage deposits:

Item	Amount
Unpaid August 2012 Rent	\$1,600.00
Key Replacement	5.00
Less Security and Pet Damage Deposits	-1,600.00
Partial Recovery of Filing Fee	25.00
Total Monetary Order	\$30.00

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.

I dismiss the remainder of the landlords' application for a monetary Order without leave to reapply.

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: November 20, 2012

Residential Tenancy Branch

