



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 dealt with the landlord's 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 deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her 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 he received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on April 17, 2013. I am satisfied that the landlord served her hearing package to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security/pet damage 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

The tenant first moved to the main rental house on this property in November 2011. He paid a \$1,800.00 security/pet damage deposit for that tenancy. He added a secondary suite in this rental property when he took possession of the full rental building on a one-year fixed term tenancy that commenced on December 1, 2012. Monthly rent for the whole rental property was set at \$2,550.00, payable on the first. When he added the secondary suite, he paid an additional \$350.00 security/pet damage deposit, for a total

security/pet damage deposit (security deposit) of \$2,150.00 for this property. The landlord has returned \$1,125.00 of the tenant's security deposit directly to him by way of a cheque issued on April 14, 2013. She maintained that the tenant collected his own security deposits of \$100.00 from one sub-tenant, Adam (a prospective tenant) and \$50.00 from George (her current tenant) who subsequently moved into the secondary suite in this rental property. Despite the landlord's testimony regarding the tenant's retention of deposits from Adam and George, I advised the parties at the hearing of my finding that the landlord has retained \$1,025.00 from the deposits paid by the tenant for this tenancy.

The tenant advised the landlord by way of a March 23, 2013 text message that he was planning to end his tenancy by April 1, 2013. He testified that he vacated the main rental house unit by April 13, 2013, at which time he placed the keys to the main house in a location accessible to the landlord. The landlord retrieved these keys the following day and forwarded him the \$1,125.00 cheque for a portion of the security deposit,

The landlord applied for a monetary award of \$2,700.00. This amount included a request for authorization to retain \$900.00 from the tenant's security deposit and \$1,800.00 for her loss of rent for the main rental house for April 2013. She testified that she was able to enter into a new one-year fixed term tenancy agreement with Tenant George commencing on May 1, 2013 for his rental of the entire rental property (including both the main rental house and the secondary suite) for \$2,350.00, payable on the first of each month. The landlord is not seeking the difference in rent obtained for the duration of this tenancy. She has limited her monetary claim to the recovery of her lost rent during April 2013 (plus the security deposit).

Shortly after the tenant gave his notice that he was planning to end his tenancy, he asked the landlord if she would consider letting him find other tenants to mitigate his losses for the remainder of his fixed term tenancy. With the landlord's consent, he commenced placing advertisements as to the availability of both the main house and the secondary suite for April 2013. The tenant testified that he received many enquiries and was able to locate George who was interested in renting the secondary suite and an individual from Alberta, Adam, who wanted to rent the main rental home.

As noted above, the landlord did accept George initially as the tenant in the secondary suite. She signed a tenancy agreement with George on April 2, 2013 for the secondary suite. At that time, George was to commence his tenancy on April 6, 2013, for a monthly rent of \$750.00.

The landlord also entered into written evidence a series of text messages chronicling her interaction with the tenant commencing on March 4 2013. In a text message of March 25, 2013, the tenant stated "I got a guy for the suite but interest for the house seems to be non existent." This undisputed written evidence conflicted with the tenant's statement at the hearing that he had "about a thousand' enquiries about this tenancy and could easily have rented the premises to tenants had the landlord been willing to do so. The text messages note that the landlord had also placed an on-line advertisement for the availability of the main rental house by March 25, 2013. The text messages confirm that the tenant was able to interest an Alberta resident, Adam, as a prospective tenant. However, despite the tenant's apparent acceptance of a deposit from Adam and efforts to expedite this process by both the tenant and the landlord, Adam never did sign papers committing him to rent the main rental house. For example, Adam advised on April 2, 2013 that he would be unable to leave Calgary until later that week. By April 8, 2013, Adam was still in Alberta and had not signed anything. By April 11, 2013, Adam advised that his work was keeping him in Alberta until April 28, 2013, and, as such, he could not move in until May 1, 2013. At that point, the landlord posted an on on-line advertisement on Craigslist advertising the availability of the main rental house.

The landlord testified that the new tenant, George, had also discussed with her the possibility of his finding a friend who might be willing to assume responsibility for a portion of the overall rental of this property. She said that she eventually agreed to rent the entire property including both the secondary suite and the main rental home to George as of May 1, 2013. George had located a family that was willing to pay him for use of the main rental home. As she was satisfied with George as a tenant, she agreed to a reduced total monthly rental of \$2,350.00 on a one-year fixed term tenancy commencing on May 1, 2013.

The tenant testified that the landlord held up negotiations with Adam as a prospective tenant and rejected the efforts that the tenant had made to mitigate his losses for April 2013. He also claimed that the landlord's failure to list the availability of the rental property until April 11, 2013, demonstrated her lack of effort in trying to mitigate his losses for April 2013.

Analysis

Section 9 of the Residential Tenancy Agreement (the Agreement) entered into between the parties and submitted as written evidence by the landlord read as follows:

9. Assign or Sublet

1) The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length of

6 months or more, the landlord must not unreasonably withhold consent. Under an assignment a new tenant must assume all of the rights and obligations under the existing tenancy agreement, at the same rent. The landlord must not charge a fee or receive a benefit, directly or indirectly, for giving this consent.

2) If a landlord unreasonably withholds consent to assign or sublet or charges a fee, the tenant may apply for dispute resolution under the Residential Tenancy Act...

In this case, the tenant gave sworn testimony that he never made a request to the landlord to give her written consent to sublet either of the rental units he was responsible for as per his fixed term tenancy agreement. Although there were frequent conversations and/or text messages exchanged between the parties with respect to their efforts to find new tenants for this property, these interactions never led to any formal request from the tenant to the landlord to approve a sublet of the premises to new tenants or sub-tenants. I find that the individual identified by the tenant as a prospective tenant for the main rental home was unable to leave Calgary in time to mitigate the tenant's responsibilities for the rent payment for the main rental home for April 2013. I do not find that the landlord is in any way responsible for the prospective tenant's unwillingness to pay any rent for April 2013, as expressed in his April 11, 2013 text message. I do not find that the landlord unreasonably withheld her consent to rent the main rental home to the prospective Alberta tenant. In fact, I find quite the opposite in that the landlord took the exceptional measure of accepting less rent for the remainder of the original fixed term tenancy as of May 1, 2013, in order to mitigate the tenant's losses.

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 his fixed term tenancy agreement because he vacated the rental premises prior to the December 31, 2013 date specified in that Agreement. As such, the landlord is entitled to compensation for losses she incurred as a result of the tenant's failure to comply with the terms of their Agreement and the *Act*.

I note that section 45(1) of the *Act* requires a tenant, even in a 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 April 2013, even in a periodic tenancy (which this tenancy was not), the tenant would have needed to provide his notice to end this tenancy before March 1, 2013. Section 52 of the *Act* requires that

a tenant provide this notice in writing. A text message is insufficient to comply with this requirement of the *Act*.

There is undisputed evidence that the tenant did not pay any rent for April 2013, the last month of his fixed term tenancy. 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 did attempt to the extent that was reasonable to assist the tenant in locating new tenants who would take over his rental obligations for the remainder of his tenancy. She signed an agreement with George to assume responsibility for rent for the secondary suite and has not claimed for the \$750.00 portion of the overall \$2,550.00 rent due from the tenant as of April 1, 2013. I find that the undisputed text messages entered into written evidence by the landlord confirm her sworn testimony that the landlord tried to the extent that was possible and reasonable to rent the premises to Adam, the individual identified as the prospective tenant for the main rental home by the tenant. However, Adam's frequent delays led her to eventually conclude by April 11, 2013, that she would be better served by attempting to identify a new tenant herself rather than continue with a process that was only adding to the tenant's losses. Once she engaged in this process, she was able to mitigate the tenant's losses from May 2013 until December 2013 by entering into a revised tenancy agreement with George for a one-year fixed term.

I note that the landlord accepted \$200.00 less in monthly rent for the period from May 1, 2013 until December 31, 2013, the remaining portion of the tenant's fixed term tenancy. Although the landlord might have claimed for this loss in income that results from the tenant's premature ending of his tenancy, she did not do so, and has limited her claim to her loss of rent of \$1,800.00 for April 2013. In taking this approach, the landlord has accepted that she benefitted from obtaining a tenant who would be able to fulfill his contractual obligations and continue to rent the premises from her for a reduced overall monthly rental.

I am fully satisfied that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the tenants' losses. I find that the landlord is entitled to a monetary award of \$1,800.00, the amount of her direct loss of income for April 2013.

As noted above, I am not satisfied that the landlord can recover any deposits obtained by the tenant from either of the prospective sub-tenants he located while he was attempting to mitigate his losses. She signed two new tenancy agreements with George and the arrangements reached between her and George with respect to his

payment of a security deposit is not a matter that involves the tenant. Any recourse that George or anyone else may have with the tenant with respect to this tenancy is not subject to an application for a monetary award by the landlord.

As I find that the landlord continues to hold \$1,025.00 from the tenant's security deposit, I allow the landlord to retain this amount from the monetary award issued in this decision plus applicable interest. No interest is applicable over this period.

As the landlord has been successful in her application, I allow her to recover her filing fee from the tenant.

Conclusion

I issue a final and binding monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and her filing fee, and to retain the remaining portion of the tenant's security deposit from this tenancy.

Item	Amount
Unpaid Portion of April 2013 Rent	\$1,800.00
Less Remaining Portion of Security Deposit	-1,025.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$825.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order 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 final and binding 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: May 22, 2013

Residential Tenancy Branch

