



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, 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, for damage to the rental unit, 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 the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:44 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that on March 14, 2013, the landlord received the tenant's written notice to end this tenancy by March 31, 2013, placed under the landlord's door.

The landlord testified that the landlord sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on April 17, 2013. He testified that this package was sent to the tenant at the forwarding address provided by the tenant at the joint move-out condition inspection when the tenant vacated the rental unit on March 31, 2013. The landlord provided the Canada Post Tracking Number to confirm the registered mailing of the hearing package. The landlord also testified that Canada Post's On-Line Tracking system revealed that the package was returned to the landlord on April 22, 2013, after Canada Post could not deliver it to the tenant at that address. I am satisfied that the landlord has served the tenant with the dispute resolution hearing package in accordance with sections 89 and 90 of the *Act*. The tenant was deemed served with this package on April 22, 2013, the fifth day after its registered mailing.

Issues(s) to be Decided

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

This tenancy began on February 1, 2012 as a six-month fixed term tenancy. Once the initial term expired, the tenancy converted to a periodic tenancy. Monthly rent was set at \$810.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$405.00 security deposit paid on January 6, 2012.

The landlord applied for a monetary award of \$894.00, plus the recovery of the landlord's filing fee. This amount included a request for unpaid rent of \$810.00 for April 2013, due to the late notice to end this tenancy provided by the tenant. The landlord's requested monetary award also included an \$84.00 charge for cleaning the rental unit.

Although the landlord referred to the results of the joint move-out condition inspection report and the residential tenancy agreement for this tenancy, the landlord's only written evidence, other than the application for dispute resolution, was a one-page document regarding the service of the dispute resolution hearing package.

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. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving 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, the tenant would have needed to provide his notice to end this tenancy before March 1, 2013. As this did not occur, I find that the tenant did not comply with the provisions of section 45(1) of the *Act*.

There is undisputed evidence that the tenant did not pay any rent for April 2013. 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 re-rent the premises for April 2013, by placing advertisements on popular rental websites and on the landlord's own website. The landlord testified that the premises were rented to a new tenant as of May 15, 2013. I am satisfied that the landlord has discharged the duty

under section 7(2) of the *Act* to minimize the tenant's loss. I find that the landlord is entitled to a monetary award of \$810.00 for unpaid rent owing for April 2013.

I dismiss the landlord's claim for a monetary award for cleaning without leave to reapply. I do so as the landlord did not provide any written or photographic evidence to support this portion of the landlord's claim.

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

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and the filing fee for this application and to retain the tenant's security deposit.

Item	Amount
Unpaid April 2013 Rent	\$810.00
Less Security Deposit	-405.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$455.00

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 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: July 12, 2013

Residential Tenancy Branch

