



Dispute Resolution Services

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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 MNR, MNSD, FF, O

Introduction

This hearing dealt with the landlord's 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- other remedies, identified in the Details of the Dispute section of the landlord's application as a request to recover costs of pest control treatment at the end of this tenancy.

The tenant did not attend this hearing, although I waited until 1:46 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on December 12, 2013. She provided the Canada Post Tracking Number to confirm this registered mailing. She also gave sworn testimony that she discussed the landlord's dispute resolution hearing package and application for dispute resolution with both the tenant's support worker and the tenant after the tenant received the hearing package. I am satisfied that the landlord served this package to the tenant in accordance with the *Act* and that in accordance with sections 89 and 90 of the *Act* the tenant was deemed served with this package on December 17, 2013, the fifth day after its service.

The landlord testified that she sent a copy of the landlord's written evidence package to the tenant by registered mail on December 21, 2014. While she provided the Canada Post Tracking Number for that mailing, she said that the tenant's support worker had informed her that the address given to her by the tenant and where she had sent the evidence package was not the tenant's correct address. Under these circumstances

and as the landlord was uncertain as to the accuracy of the mailing address where she sent the written evidence, I find that the landlord has not served the written evidence to the tenant in accordance with the Act. I have not considered this evidence in reaching my decision on the landlord's claim for a monetary award.

At the commencement of the hearing, the landlord said that the tenant vacated the rental unit on December 16, 2013. She testified that the landlord was successful in re-renting the premises for January 2014. As such, the landlord reduced the amount of the requested monetary award from \$2,000.00 to \$1,140.00 to reflect the landlord's mitigation of the original claim for unpaid rent for both December 2013 and January 2014. The landlord's claim for a monetary award is reduced to \$1,140.00.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? 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 as a 7-month fixed term tenancy on October 1, 2006. At the expiration of the initial term, the tenancy continued as a periodic tenancy. Monthly rent by the end of the tenancy was set at \$860.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$395.00 security deposit.

Although the landlord said that a joint move-in condition inspection was conducted at the beginning of this tenancy, she had no copy of the report of that inspection. She did not prepare a move-out condition inspection report of her own inspection of the rental unit on December 17, 2013.

The landlord's revised application for a monetary award of \$1,140.00 included unpaid rent of \$860.00 and a request for reimbursement of \$300.00 in pest control costs undertaken at the end of this tenancy.

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. There is undisputed evidence that the tenant did not pay any rent for December 2013, the last month of his 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 re-rent the premises and, was in fact successful in re-renting the premises as of January 1, 2014. As such, I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the tenants' loss.

For these reasons, I allow the landlord a monetary award of \$860.00 for unpaid rent owing from December 2013. I find that this is the only unpaid rent owing from this tenancy. Without evidence of the condition of the rental unit at the beginning of this tenancy, a move-out condition inspection report and any written or photographic evidence that I can consider for the purposes of this hearing, I am unable to consider any other monetary award other than the landlord's successful application to recover the \$50.00 filing fee from the tenant.

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.

Conclusion

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

Item	Amount
Unpaid December 2013 Rent	\$860.00
Less Security Deposit plus Interest (\$395.00 + \$12.46 = \$407.46)	-407.46
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$502.54

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: February 03, 2014

Residential Tenancy Branch

