



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DON WON APARTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNR, O

Introduction

This hearing was convened in response to an application by the landlord under *the Residential Tenancy Act* (the Act) for compensation in satisfaction of unpaid rent /revenue loss for tenant's breach of the tenancy agreement.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The landlord does not acknowledge receiving the late evidence of the tenant. The landlord provided evidence they also sent the tenant. None the less, the landlord and tenant were each given opportunity to orally provide their respective evidence in testimony and were given opportunity to respond to it. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. I accept the landlord's oral amendment to this matter representing their claim as one month's rent of \$900.00.

It must be noted that preliminary discussions revealed the tenant's late evidence comprises the tenant's dispute in this matter, for which it is available to the tenant to make their own application for dispute resolution if they have evidence applicable to a dispute which can be dealt with under the Act.

Issue(s) to be Decided

Is the landlord entitled to compensation for loss of revenue?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started February 15, 2013 and ended when the tenant vacated December 01, 2013. Under the tenancy

agreement rent in the amount of \$900.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected from the tenant a security deposit and a pet damage deposit each in the amount of \$450.00 – in the sum of \$900.00, as well as a key fob deposit of \$50.00 – all of which the landlord retains in trust. The landlord does not dispute the tenant is owed the \$50.00 key fob deposit.

The parties agree the tenant indicated to the landlord in a text message they were vacating the unit, a month before the tenant vacated. The parties further agree the tenant did not provide the landlord with written notice to vacate in accordance with the Act.

The landlord testified they did not come to realize the tenant was vacating until days before the tenant vacated. The landlord claims that in the absence of written notice they were not legally placed on notice the tenant was vacating and therefore did not take steps to re-rent the unit and upon learning from the tenant they were vacating could not effectively mitigate losses; and, as a result they incurred a loss of revenue for December 2013. The tenant claims that despite the absence of legal written notice the landlord ought to have known they were vacating and taken steps to re-rent the unit.

Analysis

On preponderance of all the evidence in this matter, I have reached a Decision upon the following findings.

I find the tenant ended the tenancy without providing the landlord with the prescribed Notice to end the tenancy in accordance with **Section 45** and **Section 52** of the Act, which in relevant parts state as follows,

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

I find the tenant failed to provide the landlord with legal notice under the Act to end the tenancy as required by Section 45. I accept the landlord's testimony that in the absence of written notice in accordance with the Act, they were not able to re-rent the unit.

I find that the tenant's non compliance with the tenancy agreement or the Act resulted in the landlord's loss of revenue. Therefore, **I grant** the landlord their request for unpaid rent for December 2013 in the amount of **\$900.00**.

The landlord agrees the tenant is owed the return of their key fob deposit of \$50.00.

Conclusion

I Order that the landlord may retain the security deposit and pet damage deposit of this tenancy in the sum of **\$900.00** in full satisfaction of their claim.

I grant the tenant an Order under Section 67 of the Act for the amount of **\$50.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: March 31, 2014

Residential Tenancy Branch

