



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kenson Realty
and [tenant name suppressed to protect privacy]

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 pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his 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, to call witnesses and to cross-examine one another. The tenant confirmed that he received a copy of the landlord's original dispute resolution hearing package sent by the landlord by registered mail on January 9, 2014. The tenant testified that he also received a copy of the landlord's amended application for dispute resolution handed to him by the landlord earlier in the month of this hearing. I am satisfied that the landlord has served both his original hearing package and his amended package in accordance with the *Act*. The tenant also confirmed that he has received copies of the landlord's written evidence.

The landlord's original application was for a monetary award of \$1,400.00, an amount which was to allow him to recover two months of lost rent. His original application sought to retain the tenant's deposits and receive a monetary award of \$1,400.00, plus his \$50.00 filing fee. The landlord reduced the amount of his requested monetary award by \$1,400.00 in his amended application, as he had been successful in mitigating the loss of rent for January 2014, by re-renting the rental unit to a new tenant. The landlord's revised application sought authorization to keep the tenant's deposits for his loss of rent for December 2013, and to obtain the recovery of his \$50.00 filing fee for his application.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's pet damage and security deposits 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 landlord entered into written evidence a copy of the one-year fixed term Residential Tenancy Agreement (the Agreement) the parties signed on January 15, 2013.

According to the terms of the Agreement, the tenant was to commence occupancy on February 1, 2013, and retain possession until the expiration of the fixed term on January 31, 2014. Monthly rent was set at \$1,400.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$700.00 security deposit paid on January 15, 2013, and \$700.00 pet damage deposit paid on March 1, 2013.

The parties agreed that they conducted joint move-in and joint move-out condition inspections on February 6, 2013 and November 28, 2013 respectively. The landlord also entered into written evidence copies of the condition inspection reports for these inspections, which were provided to the tenant. Although the landlord noted that there was some damage on the joint move-out condition inspection report, the landlord has not included any claim for damage in his application for a monetary award for losses and damages.

On November 6, 2013, the tenant sent the landlord an email advising him that he was planning to vacate the rental unit by January 1, 2014. After some communication between the parties, the tenant revised his planned departure date so as to vacate the rental unit before December 1, 2013. Although the tenant said that he had a verbal agreement with the landlord to move out by that date, he testified that he had no written mutual agreement with the landlord to end this tenancy early. He also confirmed that he did not put anything specific in a written letter or note to advise the landlord that he intended to end his tenancy before January 31, 2014.

I heard sworn testimony and received written evidence from the landlord as to the landlord's claim that he could not show the rental unit until after November 18, 2013, because the tenant refused to let him do so. The tenant testified that he did not refuse requested showings and the landlord maintained that he could not show the premises until after November 19, 2013.

The landlord testified that as soon as he received the tenant's email on November 12, 2013, he posted an advertisement on a popular rental website as to the availability of

the rental unit. While the tenant did not dispute this aspect of the landlord's testimony, the tenant maintained that after the parties argued about showings, the landlord told him that he was going to remove his advertisement and make no further efforts to re-rent the premises. The landlord confirmed that he did remove the advertisement for approximately two hours on the date of their argument. However, he said that he thought better of this approach after his anger subsided and relisted the advertisement on the same website later that day. The tenant testified that the advertisement was removed from that website for two or three days. The tenant also objected to the landlord's initial restriction on any dogs in the listing of the rental unit on the rental website. However, the tenant agreed that the landlord revised the advertisement to permit a prospective tenant to keep a small dog at the rental unit after the tenant raised his concern that the landlord was unnecessarily restricting potential tenants in a way that had not been part of his original Agreement.

The landlord entered undisputed sworn oral testimony and written evidence that on December 31, 2013, he was able to rent the premises to a new tenant who took occupancy on January 1, 2014, for the same \$1,400.00 monthly rent as was being paid by the tenant. He entered into written evidence an anonymized copy of the 6-month fixed term tenancy agreement signed by the new tenant.

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.

I find that the tenant was clearly in breach of the Agreement because he vacated the rental premises prior to the January 31, 2014 end date for his fixed term tenancy. As such, the landlord is entitled to compensation for losses he incurred as a result of the tenant's failure to comply with the terms of their Agreement and the *Act*.

I also note that even if this were a periodic (month-to-month) tenancy, section 45(1) of the *Act* would have required the tenant to give his notice to end the tenancy the day before the day in the month when rent is due. In order to avoid any responsibility for rent for December 2013 in even a periodic tenancy, the tenant would have needed to provide his notice to end this tenancy before November 1, 2013. Section 52 of the *Act* requires that a tenant provide this notice in writing, which the tenant did not provide.

There is undisputed evidence that the tenant did not pay any rent for December 2013 or January 2014, the last two months 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 re-rent the premises for December 2013 and January 2014. Given the late notice provided to the tenant by email and the tenant's initial indication that he was not planning to vacate the premises until January 1, 2014, I find that the landlord took prompt and, what turned out to be, effective action to try to locate a new tenant for this rental unit. The landlord correctly noted that many potential tenants choose not to rent new premises in December or January, as this is not a popular time of year to be switching rental locations. While I have taken into account the tenant's claims regarding the landlord's actions with respect to re-renting these premises, I am fully satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize the losses arising from the tenant's decision to end his tenancy early.

I find that the landlord is entitled to a monetary award of \$1,400.00, to enable him to recover his loss of rent for this rental unit during the month of December 2013. I allow the landlord to retain the tenant's deposits to recover the monetary award issued for the landlord's loss of rent for December 2013. As the landlord has been successful in his application, I allow the landlord to recover his \$50.00 filing fee from the tenant.

Conclusion

I order the landlord to retain the tenant's deposits totalling \$1,400.00 to compensate the landlord for his loss of rent for this rental unit for December 2013. I issue a monetary Order in the landlord's favour in the amount of \$50.00 to enable the landlord to recover his filing fee for this application. 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: March 28, 2014

Residential Tenancy Branch

