



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.

The tenant did not attend this hearing, although I waited until 9:47 a.m. in order to enable him 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 sworn testimony, to make submissions and to call witnesses. The landlord testified that she sent the tenant a copy of her dispute resolution hearing package by registered mail on December 23, 2013. She provided the Canada Post Tracking Number to confirm this mailing. She testified that Canada Post returned her hearing package to her as "moved." She testified that the address given to her by the landlord and shown on the signed Residential Tenancy Agreement (the Agreement) is that of the business which the landlord owns. She said that she called that business and confirmed that the company still operates from that location. In accordance with sections 89(1) and 90 of the *Act*, I find that the tenant was deemed served with the landlord's dispute resolution hearing package, including notice of this hearing and the application for dispute resolution, on December 30, the fifth business day after its registered mailing.

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 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 landlord entered into written evidence a copy of the one-year fixed term Agreement signed by the parties on September 4, 2013. According to the terms of this Agreement, monthly rent was set at \$2,900.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$1,450.00 security deposit paid at the beginning of this tenancy.

The landlord testified that the tenant paid a pro-rated amount of \$2,175.00, the amount identified in the Agreement for the period from September 8, 2013, the scheduled commencement date of the tenancy, until the end of September 2013. She also said that the tenant paid full monthly rent of \$2,900.00 for October and November 2013.

In mid-November 2013, the tenant sent the landlord an email advising that he had run into health and marital issues and might not end up moving into the rental unit. After attempts to contact the tenant by email and phone, the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the door of the rental unit on December 2, 2013. When the tenant did not pay December 2013 rent, and after posting a notice on the tenant's door, the landlord entered the rental unit on or about December 15, 2013. She testified that she discovered at that point that the tenant had either not occupied the rental unit or had vacated the premises.

The landlord testified that she commenced efforts to re-rent the premises on December 27, 2013, when she placed advertisements on Craigslist and Kijiji, two popular rental websites. She said that she advertised in this manner again two weeks later and was eventually able to obtain a new tenant who signed a new one-year tenancy agreement with her on January 27, 2014. She said that the regular monthly rent paid by the new tenant is \$2,950.00, payable on the first of each month. She testified that she received a pro-rated rental payment of \$2,212.50 from the new tenant for February 2014.

The landlord's original application was for a monetary award of \$25,000.00, an amount intended to cover her potential loss of rent for the remainder of this fixed term Agreement. At the hearing, she testified that she lost \$2,900.00 in rent for December 2013 and January 2014, plus the first week in February 2014.

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 there is undisputed evidence that the tenant was in breach of his fixed term tenancy Agreement because he vacated the rental premises prior to August 31, 2014, the end date for 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 tenancy agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent after his payment of the full November 2013 rent payment. 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 and the timing of the landlord's discovery that the premises had been vacated (or never occupied) by the tenant, I accept that the landlord is entitled to a monetary award of \$2,900.00 for unpaid rent owing from December 2013.

The landlord gave undisputed sworn testimony that she did attempt to mitigate the tenant's exposure to her loss of rent for the remainder of the Agreement by placing advertisements on two popular rental websites. Although these efforts to re-rent the premises proved successful, she delayed taking action to do so. After discovering that the tenant was not residing in the rental unit on or about December 15, 2013, she delayed placing advertisements for the availability of the rental until December 27, 2013. While I will accept that it may have taken the landlord a few days to advertise for this rental unit, I do not accept that a delay of 12 days satisfies the requirements of 7(2) of the *Act* to attempt to minimize the tenant's exposure to losses. I find that the landlord did attempt to an extent to re-rent the premises and I am satisfied that the landlord has discharged, for the most part, her duty under section 7(2) of the *Act* to minimize losses. I find that the landlord's delay in advertising this rental unit reduces the landlord's entitlement to her loss of rent for January 2014, by 10 days, representing 10/31 of the rent that she would otherwise have been entitled to receive. This results in a monetary award of \$1,998.39 {i.e., $\$2,950.00 \times (31-10)/31 = \$1,998.39$ } for the landlord's loss of rent for January 2014.

I find that the landlord did receive \$2,212.50 in rent from the new tenant for February 2014, instead of the \$2,900.00 that she would have received from the tenant/Respondent in accordance with the Agreement. I allow the landlord a monetary award of \$687.50 (i.e., $\$2,900.00 - \$2,212.50 = \$687.50$), the difference between these two figures.

In considering the landlord's actual losses, I find that the landlord is only entitled to her actual rental losses arising out of the tenant's contravention of the terms of his Agreement. Since the landlord was successful in obtaining an additional \$50.00 in rent from the new tenant than was being paid by the tenant/Respondent, I reduce the

landlord's entitlement to a monetary award by \$50.00 for each of the six months from March 2014 until and including August 2014, when this tenancy was to end. This results in a reduction in the landlord's entitlement to a monetary award by \$300.00.

As the landlord has been successful in this application, I allow her to retain the tenant's security deposit plus applicable interest to partially satisfy the monetary award issued in this decision. No interest is payable over this period. As the landlord was successful in her application, I allow her to retain her 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 her actual losses in rent arising from the tenant's actions and her filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid December 2013 Rent	\$2,900.00
Loss of Rent January 2014	1,998.39
Loss of Rent February 2014	687.50
Less Additional Rent Received by Landlord from New Tenant from March 2014 until August 2014	-300.00
Less Security Deposit	-1,450.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$3,935.89

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: April 11, 2014

Residential Tenancy Branch

