



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 applications from both Landlord PS (the landlord) naming Tenant SL (the tenant) as the Respondent and the tenants naming both landlords as Respondents under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent and utilities 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.

The tenants applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of their deposits pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlords 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 landlord's agent (the agent), named as one of the Respondents in the tenants' application, testified that the male tenant (the tenant) notified him by email on January 8, 2014 that the tenant(s) would not be taking occupancy of the rental as planned on February 1, 2014. The agent requested written confirmation of the tenant's intention to not take occupancy. The agent gave undisputed sworn testimony and written evidence that he received this written and signed confirmation on January 24, 2014. I find that the tenant provided his written notice to end this tenancy on January 24, 2014, in accordance with the provisions of section 52 of the *Act*.

The agent testified that he sent the tenant a copy of the landlord's original application for dispute resolution as part of the landlord's dispute resolution hearing package by registered mail on February 4, 2014. The tenant confirmed that he received this initial hearing package in which the landlord requested a monetary award of \$8,400.00. In accordance with sections 89(1) and 90 of the *Act*, I am satisfied that the tenant was deemed served with the initial hearing package on February 9, 2014, the fifth day after its registered mailing.

The agent testified that he sent a copy of the landlord's amended application in which the landlord was seeking a monetary award of \$16,034.06 to the tenant by registered mail on May 6, 2014. The tenant said that he has not yet received this second package as he does not routinely check his mail more than twice per week. The agent provided the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 89(1) and 90 of the *Act*, I find that the tenant was deemed served with the landlord's amended application on May 12, 2014, the fifth business day after its registered mailing.

The tenant testified that he sent the agent a copy of the tenants' dispute resolution hearing package by registered mail on March 14, 2014. The agent confirmed that the landlords received the tenants' dispute resolution hearing package. I am satisfied that the tenants served the landlords with their hearing package in accordance with section 89(1) of the *Act*. I am also satisfied that the parties' written evidence was deemed served to one another in accordance with sections 88 and 90 of the *Act*.

At the commencement of this hearing, I clarified the spelling of the agent's last name and modified the tenants' spelling of that name on the tenants. Application.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and utilities? Is the landlord entitled to a monetary award for losses arising out of this tenancy? Are the tenants entitled to a monetary award for losses or damages arising out of this tenancy? Which of the parties are entitled to the deposits paid for this tenancy? Are either of the parties entitled to recover their filing fees from one another?

Background and Evidence

There is undisputed sworn testimony and written evidence that the agent acting on the landlord's behalf and the tenant signed a two-year fixed term Residential Tenancy Agreement (the Agreement) on December 8, 2013. The landlord entered into written evidence a copy of the Agreement which was to commence on February 1, 2014 and last until January 31, 2016. Monthly rent for this strata unit was set at \$4,200.00,

payable in advance on the first of each month, plus heat and hydro. The tenant paid a \$2,100.00 security deposit and a \$2,100.00 pet damage deposit on December 8, 2013, at the time he signed this Agreement. The landlord continues to hold these deposits.

The agent gave undisputed sworn testimony that the tenant called him about a month after the parties signed the Agreement. He said that the tenant informed him after 10 minutes that he was no longer planning to move into the rental unit. The agent testified that the parties had a second telephone conversation at which time the agent requested written confirmation that the tenant was no longer planning to abide by the terms of their Agreement. As outlined above, the tenant sent an email on January 8, 2014, followed by a signed copy of his notice that he would not be moving into the rental unit.

The tenant testified that the agent told him that the tenant would need to provide him with 24 post-dated cheques to cover his monthly rent. The tenant maintained that the agent advised him that if he failed to provide these cheques as requested that the Agreement would have no legal effect. As the tenant did not provide these cheques, the tenant claimed that the Agreement was not valid. The tenant said that the agent told him that he would have no difficulty in finding another tenant once the tenant provided his written notice that he would not be taking up residence in the rental unit. The tenant said that the agent never told him that he would lose his deposits or that he might be held responsible for unpaid rent or loss of rent. The tenant said that he had known the agent for some time as he lived in the same building and trusted the agent. The tenant said that had he been told of the potential financial implications of his failure to abide by the terms of his signed Agreement, he would likely have moved into the rental unit as per the terms of their Agreement.

The agent testified that he commenced efforts to re-rent the premises shortly after he received written confirmation from the tenant that he would not be moving into the rental unit. The agent entered written evidence that he placed advertisements on two popular rental websites and also enquired with contacts he had with the U.S. Consulate with whom he has rented such properties in the past. He said that he advertised the availability of this rental unit for the same \$4,200.00 monthly rent that was to have been paid by the tenant according to the Agreement. He said that he had rented this rental unit in the past for \$4,000.00. He also said that he initially attempted to secure a two year Agreement with prospective new tenants. He gave sworn oral testimony and submitted written evidence that he was successful in locating a new tenant who signed a one-year Agreement on February 16, 2014. The monthly rent for the new tenants was set at \$3,800.00, payable in advance on the first of each month. According the new tenants were to begin paying monthly rent on March 16, 2014. This Agreement called for the new tenancy to end on March 31, 2015. The agent said that the tenants were

unwilling to enter into a two-year tenancy as they were moving from a single family home and were uncertain as to how they would like strata living.

The landlord's initial application for a monetary award of \$8,400.00 sought authorization to obtain a monetary award for unpaid rent for February 2014 and to retain the tenant's deposits. The landlord's amended application for a monetary award of \$16,034.06 included the following items:

Item	Amount
Unpaid February 2014 Rent	\$4,200.00
Unpaid Rent - March 1, 2014 to March 15, 2014 (One Half Month's Loss of Rent \$2,100.00)	2,100.00
Difference in Rent for Remainder of Agreement (24 months @ \$400.00 per month = \$9,600.00)	9,600.00
Filing Fee	100.00
Hydro Cost Feb. 1 to March 15, 2014	30.07
Advertising Cost	3.99
Total Monetary Order Requested	\$16,034.06

The tenants applied for a monetary award of \$4,200.00. In the Details of the Dispute section of their application for dispute resolution, the male tenant described the requested monetary award as being for "Breach of agreement/committing a fraud, lying and extortion of my rent deposit."

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 16 of the *Act* reads as follows:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit...

In accordance with section 16 of the *Act*, I find that the tenant's obligations under the Agreement commenced on December 8, 2013, the date when the parties signed their Agreement. While the tenant's failure to issue cheques to the landlord may have given the landlord or his agent reason to issue a notice to end tenancy, the tenant's failure to provide post-dated cheques to the agent did not end the contractual Agreement signed

on December 8, 2013. As of that date, both parties had entered into a binding written Agreement that could only be ended in writing and in accordance with the *Act*.

I find that the tenant was in breach of his fixed term tenancy Agreement because he vacated the rental premises prior to the January 31, 2016 date specified in that Agreement. 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 tenancy agreement and the *Act*.

Although it has no bearing on this type of tenancy, I note that even in a month-to-month (periodic) tenancy, section 45(1) of the *Act* requires a tenant to end a 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 February 2014 in a periodic tenancy (which this is not), the tenant would have needed to provide his notice to end this tenancy before January 1, 2014. Section 52 of the *Act* requires that a tenant provide this notice in writing. Although the tenant provided this signed notice in writing to the landlord, this did not occur until January 24, 2014.

There is undisputed evidence that the tenant did not pay any rent to the landlord or the agent for this 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 shortly after he received written notice that the tenant was not going to assume possession of the rental unit. Within a few weeks of advertising the availability of this rental unit, the agent was able to find new tenants who were willing to commit to make monthly payments of \$3,800.00 from March 16, 2014 until March 31, 2015. As such, I am satisfied that the agent and the landlord have discharged the landlord's duty under section 7(2) of the *Act* to minimize the tenant's exposure to the landlord's losses until March 31, 2015.

For these reasons, I find that the landlord is entitled to a monetary award of \$4,200.00 for unpaid rent owing from February 2014. I also allow the landlord a monetary award of \$2,100.00 to cover unpaid rent owing from March 1, 2014 until March 15, 2014.

Based on the evidence before me, I find that the landlord received one-half of the new tenant's monthly payment of \$3,800.00 for March 2014. This payment of \$1,900.00 resulted in the landlord's loss of \$200.00 over the last half of March 2014, as opposed to the \$2,100.00 that the landlord would have received from the tenant had he abided

by the terms of the Agreement. For this reason, I allow the landlord a monetary award of \$200.00 for his loss of rent for the period from March 16, 2014 to March 31, 2014.

I have also carefully considered the remainder of the landlord's claim for loss of rent for the period from April 1, 2014 until the scheduled end of the Agreement on January 31, 2016. I find that the landlord has established his eligibility for a monetary award of \$400.00 for each of the months between April 1, 2014 and March 31, 2015, the scheduled termination date of the new tenancy for this rental unit. For this reason, I issue a monetary award of \$4,800.00 ($\$400.00 \times 12 \text{ months} = \$4,800.00$) to the landlord for his demonstrated loss of income over this period.

As of April 1, 2015, I find that the landlord's claim for loss of rent becomes impossible to quantify. The existing tenancy may continue, a new tenancy may be entered into for the same monthly rent, less monthly rent or more monthly rent, or the rental unit may remain vacant. By signing a new Agreement with a scheduled termination date of March 31, 2015, the landlord has entered into a new Agreement, which effectively ends the landlord's entitlement to a monetary award for loss of rent stemming from the original Agreement as of that date. It is completely uncertain as to whether the landlord will suffer a loss of rent for the period from April 1, 2015 until January 31, 2016. I dismiss the landlord's application for a monetary award for loss of rent for the period from April 1, 2015 until January 31, 2016, without leave to reapply. The landlord had the option of delaying applying for dispute resolution until such time as he knew the full extent of his lost rent, but chose to proceed with his application against the tenant at this time. He has only one opportunity to seek a claim for the same loss of income against the Respondent. I find that the landlord is precluded from making a further application for loss of rent from the tenant.

Based on the landlord's undisputed written evidence, I find that the landlord is entitled to recover a portion of his hydro bill of \$30.07, which covered the 58 day period from January 16 2014 until March 14, 2014. As this tenancy was not scheduled to begin until February 1, 2014, I find that the landlord's eligibility to recover hydro costs extends only from February 1, 2014 until the February 16, 2014 date when the new tenants signed their new tenancy Agreement with the landlord. I find that there is no reason to hold the tenant responsible for any of the remaining portion of the landlord's hydro bill. The tenant never occupied the rental unit and the landlord has failed to show that the landlord's hydro bills from February 17, 2014 until March 14, 2014 had any connection to the tenant's failure to abide by the terms of his Agreement. By February 1, 2014, the landlord had accepted that the Agreement had ended and the landlord was actively attempting to locate new tenants. For these reasons, I issue a monetary award in the landlord's favour in the amount of \$8.30 ($\$30.07 \times 16/58 = \8.30).

I allow the landlord a monetary award of \$3.99 to recover the advertising costs he incurred to re-rent these premises. He entered into written evidence a copy of the invoice he received for these costs.

I allow the landlord to retain the tenants' deposits in partial satisfaction of the monetary award issued in this decision. No interest is payable on these deposits during the period of this tenancy. As the landlord has been successful in this application, I allow him to recover his \$100.00 filing fee from the tenant.

I dismiss the tenants' application without leave to reapply as I find no substance to their claim that the landlords breached their Agreement. As noted above, I find that it was the tenant and not the landlord who breached this Agreement. I also find that there was no need for the tenants to have applied to obtain a return of their deposits. The landlord had already applied for authorization to retain their deposits within 15 days of the end of this Agreement and far in advance of the tenants' application for dispute resolution.

Conclusion

I issue a monetary Order in the favour of the landlord under the following terms, which allows the landlord to recover unpaid rent, losses of rent and utilities, and the filing fee for this application and to retain the deposits for this tenancy:

Item	Amount
Unpaid February 2014 Rent	\$4,200.00
Unpaid Rent - March 1, 2014 to March 15, 2014 (One Half Month's Loss of Rent \$2,100.00)	2,100.00
Loss of Rent from March 16 – 31, 2014	200.00
Difference in Rent from April 1, 2014 to March 31, 2015 (12 months @ \$400.00 per month = \$4,800.00)	4,800.00
Landlord's Eligible Portion of Hydro Costs	8.30
Landlord's Advertising Costs	3.99
Less Deposits (\$2,100.00 + \$2,100.00 = \$4,200.00)	-4,200.00
Filing Fee	100.00
Total Monetary Order	\$7,212.29

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.

The landlord is precluded from seeking any additional monetary award for losses arising out of this tenancy.

I dismiss the tenants' application without leave to reapply.

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: May 20, 2014

Residential Tenancy Branch

