



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for: unpaid rent or utilities; for money owed or compensation for loss or damage under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep the Tenants’ security deposit and to recover the filing fee for the cost of the Application.

An agent for the Landlord and one of the Tenants appeared for the hearing and provided affirmed testimony during the hearing as well as evidence prior to the hearing. I was satisfied that the Notice of Hearing documents and the evidence was served by the parties in accordance with the Act and the Rules of Procedure.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. I have reviewed the evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

- Is the Landlord entitled to loss of rent for the remainder of the tenancy?
- Did the Landlord mitigate loss under the Act?
- Is the Landlord entitled to keep the Tenants’ security deposit in partial satisfaction of the Landlord’s claim?

Background and Evidence

Both parties agreed that the tenancy for this rental unit in a strata building started on January 15, 2013 and was for a fixed term of one year due to expire on January 15,

2014. However, the tenancy ultimately ended on October 31, 2013 when the Tenants were issued with an Order of Possession based on a notice to end tenancy for repeatedly late payment of rent. Rent for the tenancy was established in the amount of \$1,000.00 payable by the Tenants on the first day of each month. The Tenants also paid the Landlord \$500.00 as security deposit on January 15, 2013 which the Landlord still retains. The Landlord's agent testified that the Tenants had not provided a forwarding address but he was able to acquire one and serve the Tenants with the paperwork for this hearing.

The Landlord's agent testified that before the tenancy started the Landlord had to obtain permission from the strata council to rent the suite based on reasoning of hardship. As a result, the Landlord was able to obtain this permission in December, 2012. The Landlord's agent submits that the Tenants were made aware of this fact at the start of the tenancy and relies on an e-mail received from the Tenants in which they refer to a conversation involving the requirement of the Landlord to apply to the strata for permission for the tenancy to continue after the one year fixed term.

The Landlord's agent testified that after July, 2013, the relationship between the Landlord and the Tenants deteriorated and as a result, the tenancy was ended after a hearing took place on October 16, 2013 for a notice to end tenancy for repeated late payments.

As a result, the Landlord claims for loss of rent (2.5 months) for the remainder of the tenancy in the amount of \$2,500.00. When the Landlord's agent was questioned about how the Landlord had mitigated loss, the Landlord's agent made the following submissions which were backed up with e-mail evidence relating to 2013:

- September 17 – e-mail request to the strata council for information to start the process of getting approval after the this fixed term tenancy was to end.
- September 23 – no response was received so the Landlord's agent sent another e-mail requesting that the process for applying be done as quickly and effectively as possible.
- September 26 – response from strata council which contained an attachment listing a number of items the Landlord was required to submit before the application could be looked at.
- October 17 – the Landlord's submission of written documents sent to the strata council for approval
- October 28 – reply from the strata council stating that the application had been denied because all the necessary documentation had not been submitted

- November 21 – second submission of written documents.
- December 11 – approval given by strata for the Landlord to rent the suite for another fixed term starting in 2014.

The Landlord's agent testified that after the approval was granted from the strata council, the Landlord signed an agreement with a property agent who was tasked with finding a new Tenant for the rental suite who then subsequently placed advertisements on various websites. As a result, the rental suite was re-rented on February 1, 2014. However, the Landlord failed to supply any evidence of the advertisements or the agreement with the property agent.

The Landlord also claims \$77.70 for the cost of replacing the locks to the rental suite. The Landlord's agent testified that the Tenants sent an e-mail advising that they had vacated the rental suite and that the Landlord could keep the security deposit. The e-mail also requests the Landlord not to contact the Tenants. As a result of this e-mail, the Landlord attended the suite and was unable to gain entry as the Tenants failed to leave the keys behind and the deadbolt had been changed. The Landlord's agent testified that the Landlord called a Locksmith who changed the locks and provided an invoice for the amount being claimed for this hearing. The Landlord's agent confirmed that the Tenants had not left the keys in the suite when the Landlord was eventually able to gain access.

The Landlord also makes a claim of \$112.45 for loss of utilities for the months of November and December, 2013, but confirmed that the Tenants had vacated the suite on October 31, 2013.

The Tenant submitted that the permission to rent out the suite by the Landlords from the strata council was obtained in December, 2012 for a period of one year and therefore the tenancy should have expired on December, 2013; however, the Tenant confirmed that they had engaged into a fixed term tenancy until January 15, 2014.

The Tenant submitted that the Landlord did not mitigate loss under the Act and should not be entitled to any loss. In support of this the Tenant submitted that the Landlord only enquired about getting permission to rent out the suite for another year on September 17, 2013 and that a mere request was not sufficient to mitigate loss. The Tenant submitted that the Landlord had no evidence to support the fact that a property agent was brought on board to re-rent the suite and denies any advertisements were placed by the Landlord. The Tenant also submitted that the Landlord had taken an unreasonable amount of time to submit their actual application to the strata council and that the Tenant should not be held responsible for delays caused by the Landlord's attempts to obtain permission and the delays caused by the strata council in responding

to the Landlord's throughout the process. The Tenant submitted that the Landlord had already gone through a similar process with the strata council before the tenancy began and questioned why the Landlord had to go through another similar process which took so long.

In relation to the Landlord's claim for the changing of the locks, the Tenant testified that they left the keys for the Landlord inside the rental suite and the Landlord had a key to get into the rental suite. The Tenant submits that if the Landlord had to get a Locksmith to break the lock and change it, the invoice the Landlord submitted, would have documented this and would have been a much larger amount; as a result, the Tenant submits that the Landlord is seeking to charge them the cost of re-keying the suite which was done of the Landlord's accord and not because the Tenants had changed the locks as testified to by the Landlord's agent. The Tenant also submitted that if the Landlord's could not gain access why did they not contact the Tenants about this.

Analysis

Firstly, I find that the provisions of section 38(1) (d) of the Act do not apply as the Tenant did not provide the Landlord with a forwarding address in writing.

In analysing the Landlord's claim for lost rent I have taken into consideration Section 7(1) of the Act which states that a party not complying the Act, the regulations or the tenancy agreement must pay the other for damage or loss that results. However, Section 7(2) of the Act states that a party claiming for compensation for loss must do whatever is **reasonable** to minimize the loss. I have further considered Policy Guideline 5 to the Act which provides guidance on a party's duty to minimize loss, in particular the following:

- The Legislation requires the party seeking damages to show reasonable efforts were made to reduce or prevent the loss claimed.
- The party who suffers the loss need not do everything possible to minimize the loss.
- If the arbitrator find that s a party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

Based on the foregoing, I find that the tenancy was ended because the Tenant had breached the Act and as a result of this breach the Landlord was issued an Order of Possession which ended the fixed term tenancy. As a result, I find that the Tenant should be held responsible for compensating the Landlord for the breach of the fixed

term tenancy which was ended through the Tenant's repeatedly late payments of rent, as detailed in the arbitrator's decision issued on October 16, 2013.

In determining the amount to be paid to the Landlord by the Tenants, I have considered the above evidence provided by both parties. I accept the evidence of the Tenant that the Landlord provided no corroborative or supporting evidence showing that attempts had been made to re-rent the suite after approval from the strata council was granted on December 11, 2013 and therefore, I have not considered any amount payable by the Tenants after this point. I also accept the evidence of the Tenant and I find that the Tenant should not be responsible for the delays caused by the strata council in responding to the Landlord's request and for delays emanating from the failure of the Landlord to submit the required documentation for approval to re-rent the suite on the first attempt.

However, I accept the Landlord's evidence that they did start the process of getting the required approval on September 17, 2013 in advance of the Tenants vacating the rental suite and based on the content of the e-mail, I find that the Landlord did express an urgency to the situation even though the Tenant submitted that it was just an enquiry. I find that the Tenant's breach of the Act which caused the tenancy to end then put the Landlord in a difficult position of having to seek approval earlier than what they would have done had the breach not occurred.

Furthermore, I find that even though the Landlord obtained an Order of Possession to enforce the ending of the tenancy, the Landlord had no guarantee that the Tenants would leave on October 31, 2013 and therefore, even if the approval by the strata had already been secured, it still would have likely take time after the Tenants had left to guarantee re-rental for the month of November, 2013. Therefore, after considering all of the above evidence, I find that it is appropriate to award the Landlord one month loss of rent in the amount of **\$1,000.00**.

In relation to the Landlord's claim for the lock changes, I find that the Tenants' actions placed the Landlord in a difficult position. Section 37(2) (b) of the Act states that at the end of a tenancy a Tenant is required to return the keys to the Landlord. However, the Tenant provided insufficient evidence, such as a condition inspection report, to support the fact that the keys had been left at the rental suite or returned to the Landlord.

However, in this case, the Tenants simply sent an e-mail to the Landlord stating that they had vacated the suite and made no mention of leaving the keys inside the rental suite as claimed by the Tenant. Furthermore, the Tenant questioned the Landlord's agent about why the Landlord had not contacted them if they could not get into the

rental suite. However, I note from the Tenant's e-mail evidence sent on the day they vacated the rental suite that they specifically requested the Landlord to have no direct or indirect contact with the Tenants. A Landlord is not responsible for chasing the Tenants' key at the end of the tenancy and for the above reasons and on the balance of probabilities, I find that the Landlord is entitled to these costs in the amount of **\$77.07**.

I dismiss the Landlord's claim for the utilities relating to November and December, 2013 because the Tenants had vacated the rental suite on October 31, 2013 and therefore they are not responsible for utilities they did not use after this time.

I also award the Landlord the **\$50.00** filing fee for the cost of making this Application pursuant to section 72(1) of the Act. Therefore the total amount awarded to the Landlord is \$1,127.07. As the Landlord already holds \$500.00 in the Tenants' security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the landlord is awarded \$627.07.

Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$627.07**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make the payment.

The Landlord's Application for loss of utilities is dismissed without leave to re-apply.

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 02, 2014

Residential Tenancy Branch

