



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damages or losses under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the tenants pursuant to section 72; and
- other unspecified remedies.

Both parties attended both hearings 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. At the March 31, 2014 hearing (the initial hearing), the female landlord (the landlord) testified that she served the tenants with a copy of the landlords' dispute resolution hearing package, including a copy of the landlords' application for dispute resolution, by sending it to them by registered mail on December 7, 2013. She entered into written evidence a copy of the Canada Post Customer Receipts, including the Tracking Number, to confirm these registered mailings to the tenants.

The tenant who attended the initial hearing (the tenant) confirmed that both tenants received the landlords' hearing package. As was noted in my Interim Decision of April 2, 2014 (the Interim Decision), she and her advocate said that the only contents of the landlords' hearing package was the Notice of a Dispute Resolution Hearing advising them of the time, date and method by which the tenants could access this hearing. The tenants' advocate (the advocate) said that the tenants were in no position to refute claims made by the landlords at the initial hearing as the landlords had not provided them with a copy of the landlords' application for dispute resolution. The tenant confirmed having received copies of the landlords' written evidence.

In accordance with section 90 of the *Act*, I found in my Interim Decision that the tenants were deemed served with the landlords' hearing packages on December 12, 2013, the fifth business day after these packages were mailed. However, I was not satisfied that

the landlords included a copy of their application for dispute resolution in the hearing package. Consequently, I determined that it was better to exercise caution to ensure that the tenants had been properly informed of the case against them before proceeding to hear the landlords' application. I agreed to the tenants' request for an adjournment of the initial hearing and ordered the landlords to send the tenants copies of their application for dispute resolution by a method authorized under section 89(1) of the *Act*.

When this hearing reconvened on May 26, 2014 (the reconvened hearing), the advocate confirmed that the landlords had notified the tenants of the reconvened hearing and had supplied the tenants with copies of the landlords' amended application for dispute resolution. In accordance with sections 88, 89(1) and 90 of the *Act*, I find that the tenants have been deemed served with the landlords' amended dispute resolution hearing package and additional written evidence on April 12, 2014, the fifth day after their registered mailing. I am also satisfied that the landlords have received copies of the tenants' written evidence in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and losses and damages arising out of this tenancy? Are the landlords entitled to recover their filing fee for this application from the tenants?

Background and Evidence

The parties signed a six-month fixed term Residential Tenancy Agreement (the Agreement) on November 25, 2013. The landlords entered a copy of the Agreement into written evidence. The advocate maintained that the tenants only agreed to sign the Agreement on the basis that they would later review each of the provisions of the Agreement, including the provision of this rental unit as furnished accommodations, and initial each page, as had been initialled by the landlord. Since neither tenant initialled any of the pages of the Agreement, the advocate asserted that the Agreement had not been properly initiated.

According to the terms of the Agreement, the tenants were to take occupancy of the rental unit on January 1, 2014. The Agreement was to terminate on June 30, 2014. Monthly rent for this furnished rental unit was set at \$1,700.00, payable in advance on the first of each month. Although the Agreement required the payment of an \$850.00 security deposit, no security was paid by the tenant.

The landlords' original application for dispute resolution included the Details of the Dispute in which the circumstances surrounding this tenancy were described by the landlords in part as follows:

The Tenant(s) and I had a verbal agreement, and the Tenant(s) had also signed a Lease Agreement with me dated November 27, 2013 for the Property in question. The Tenant(s) were to provide my agent (i.e., my father, GL) with the original copy of the Lease they had signed on Saturday, November 30th, and breached our agreement by withdrawing their interest in renting the Property on November 29th. Luckily, I was able to partially mitigate my financial losses caused by the (tenants') breach of our agreement by finding replacement Tenant(s). Nevertheless the (tenants') breach of our agreement caused me...monetary losses...

The tenants never took occupancy of the rental unit because the tenant's son was no longer planning to move into the rental unit with her and contribute to the monthly rent . The landlord gave undisputed sworn testimony that she started trying to re-rent the premises by placing ads on a popular rental website shortly after it became apparent that the tenants were no longer planning to take occupancy of this tenancy. The landlord testified that she initially advertised this as a furnished rental unit with a monthly asking rent of \$1,800.00. When interest in the rental unit was minimal and as the rental unit had been initially advertised with the tenants as an unfurnished rental unit, the landlord modified the listing to show that the rental unit was also available as an unfurnished rental unit for a monthly rent of \$1,550.00. The landlord gave evidence that she was successful in locating a new tenant who commenced paying a monthly rent of \$1,550.00 for this unfurnished rental unit as of January 15, 2014. She said that it was difficult to attract tenants in December and in the winter months.

The landlords' amended application for a monetary award of \$2,605.08 included the following items:

| Item | Amount |
|--|-------------------|
| Unpaid Rent January 2014 (\$1,700.00 - \$800.00 received from new tenant = \$900.00) | \$900.00 |
| Landlords' Loss of Rent from February 2014 to June 30, 2014 (5 months @ \$150.00 = \$750.00) | 750.00 |
| Landlords' Costs of Storing Furniture (\$508.05 + \$342.70 = \$850.75) | 850.75 |
| Mailing Costs (\$42.72 + \$11.34 = \$54.06) | 54.06 |
| Recovery of Filing Fee for this Application | 50.00 |
| Total of Above Items | \$2,604.81 |

The landlord testified that the new tenant paid \$800.00 in rent for January 2014. The advocate did not dispute the landlords' claim for the recovery of the remaining \$900.00 in rent the landlords lost in January 2014.

The landlords claimed for the difference in the monthly rent the tenants were required to pay as per the terms of their Agreement (i.e., \$1,700.00 for a furnished rental unit) and the amount the new tenant has committed to pay for the five months from February 1, 2014 to June 30, 2014 (i.e., \$1,550.00 for this unfurnished rental unit). The landlords did not enter into written evidence a copy of the tenancy agreement with the new tenant. The landlord did enter into written evidence a copy of the bank deposits for the first three months of this new tenancy, as well as the cheques in the amount of \$1,550.00 for the period from April 1, 2014 until June 30, 2014.

The landlord also applied for the recovery of storage costs incurred by her long-time male partner who gave sworn testimony as her witness at the reconvened hearing. The landlord and her witness testified that the witness entered into a storage contract on January 4, 2014 to store the possessions and furnishings in this rental unit. The landlords applied for the recovery of these storage costs until the end of the original Agreement, as the landlord maintained that these costs would not have been incurred by the landlords had the tenants abided by the terms of their Agreement. The landlord provided receipts totalling \$508.05 and estimated that the costs until June 30, 2014 would result in an additional bill of \$342.70).

The advocate asserted that the tenants never wanted the landlords' furnishings but were pressured into accepting them. The advocate noted that the landlords have not produced written evidence in the form of a copy of their advertisement on rental websites. The advocate also questioned the landlords' decision to ask for \$100.00 more in monthly rent than was established in the Agreement.

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* states that "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 this case and in accordance with section 16 of the *Act*, I find that this tenancy commenced on November 25, 2013, the date when the parties first signed their Agreement.

I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the June 30, 2014 date specified in that Agreement. As such, the landlords are entitled to compensation for losses they incurred as a result of the tenants' failure to comply with the terms of their tenancy Agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for any of the months of this 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 landlords did attempt to the extent that was reasonable to re-rent the premises for January 2014. Although the landlords did not provide a written copy of their advertisement for a new tenant, I find that the landlords' success in re-renting the premises to a new tenant who took occupancy and commenced paying rent as of January 15, 2014, confirms the landlord's sworn testimony that she did undertake adequate measures to mitigate the tenants' exposure to the landlords' rental losses. I have also taken into account the landlord's initial attempt to obtain increased monthly rent for this furnished rental unit. However, given the timing of this search for new tenants in December 2013, it is not unusual that it would take some time for a landlord to find a new tenant. Based on a balance of probabilities, I am satisfied that the landlords have discharged the duty under section 7(2) of the *Act* to minimize the tenants' exposure to rental losses arising out of the tenants' failure to abide by the terms of their signed Agreement with the landlord. For these reasons, I find that the landlords are entitled to a monetary award of \$900.00, the actual and undisputed amount of their rental loss for January 2014.

I also find that the landlord has supplied sufficient evidence, both sworn oral testimony and written evidence, to demonstrate that the landlord(s) have suffered rental losses of \$150.00 for the remainder of the term of the Agreement (i.e., February 1, 2014 until June 30, 2014). The landlord's choice to accept \$1,550.00 for an unfurnished rental unit rather than \$1,700.00 for the furnished rental unit established in the Agreement would appear to be a direct result of the landlord's interest in mitigating the tenants' exposure to her losses. For these reasons, I allow the landlords' application for a monetary award of \$150.00 for each of the five months from February 1, 2014 until June 30, 2014.

I have also considered the landlords' claim for a monetary award for losses incurred to store furniture from the rental unit in a storage facility from January 4, 2014 until June 30, 2014.

I first note that the landlords have not provided any written evidence to demonstrate that the decision to secure a storage locker was directly connected to any signed tenancy agreement with a new tenant requiring that the landlords remove the furniture from the rental unit. The landlord's witness testified that he and the landlord moved to a distant community on January 9, 2014 and had to make a decision on whether or not to store the furniture from the rental unit by that time. While this decision to store the furniture from the rental unit in a storage locker may have made the rental unit more attractive to prospective renters, there is no evidence before me that any agreement was entered into by January 4, 2014 with a new tenant requiring the furniture from this rental unit to be placed in storage.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlords to prove on the balance of probabilities that the tenant caused losses incurred by the landlords.

The only invoice provided by the landlords identifies storage costs incurred by the landlord's witness. The landlords must demonstrate that they suffered losses and that these losses resulted from the tenants' actions. I find that a decision by the landlord's male friend to enter into a storage contract five days before he and the landlord moved to another community does not demonstrate that:

- the landlords incurred these losses;
- the decision to rent a storage locker resulted directly from the tenants' contravention of the Agreement; or
- these storage costs were initiated to comply with the terms of a tenancy agreement with the new tenant.

I also find that to allow the landlords' application to recover these costs from the tenants would have the effect of imposing furniture storage costs on the tenants for furniture that the landlord had no use for either in the landlords' rental unit or in the new accommodations of the landlord and her partner. For the above reasons and on a balance of probabilities, I dismiss the landlords' application for a monetary award for

losses arising out of the storage of the furniture from the rental unit without leave to reapply.

As the landlords have been partially successful in this application, I allow the landlords to recover their \$50.00 filing fee from the tenants. As mailing costs are not recoverable under the *Act*, I dismiss without leave to reapply the landlords' application to recover the costs of mailing documents to the tenants for the purposes of this hearing.

Conclusion

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent, loss of rent and their filing fee from the tenants:

| Item | Amount |
|--|-------------------|
| Unpaid Rent January 2014 (\$1,700.00 - \$800.00 received from new tenant = \$900.00) | \$900.00 |
| Landlords' Loss of Rent from February 2014 to June 30, 2014 (5 months @ \$150.00 = \$750.00) | 750.00 |
| Recovery of Filing Fee for this Application | 50.00 |
| Total Monetary Order | \$1,700.00 |

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: May 27, 2014

Residential Tenancy Branch

