



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ONE WEST PROPERTIES CORP. "IN TRUST"
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MND MNSD MNR FF

Introduction

This hearing was convened in response to an application by the landlord under *the Residential Tenancy Act* (the Act) for partial unpaid rent / loss of revenue in the amount of \$1437.50 and to retain the security deposit in satisfaction of revenue losses. The landlord orally amended the balance of their claim to reflect that they are also seeking to recover the cost of a missing key fob in the amount of \$75.00

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The landlord acknowledged receiving the evidence of the tenant. The tenant acknowledges receiving the evidence of the landlord. Regardless of which, the landlord and tenant were each given opportunity to orally provide their respective evidence and were given opportunity to respond to it. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed relevant testimony in this matter is as follows. The tenancy started August 06, 2011 and ended January 31, 2014. Under the tenancy agreement rent in the amount of \$1750.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$875.00 which the landlord retains in trust. At 5:23 p.m. on January 13, 2014 the tenant sent the landlord an e-mail informing the landlord they were vacating at

month's end. Despite the nature and timing of the tenant's notification, the landlord acted on the tenant's e-mail and immediately placed on-line advertisements on their corporate website, Craigslist, and Kijiji, at least for the following 7 days: for February 01, 2014 occupancy. It is further undisputed that the landlord is owed \$75.00 for an unreturned key fob for the unit.

The landlord testified they received some queries to their on-line advertisements but that none of them were requests or applications for February 01, 2014 occupancy, and that most were for March 01, 2014 or later. After 7 days they accepted a new tenancy commencing February 24, 2014 for which they accepted partial month's rent and as a result removed the online advertisements for the unit. The landlord testified that in their experience after the first week of a given month seekers of accommodations are searching for same for the month after the following as they must give notice to end at their current accommodations; or, they have already found accommodations for the following month. The landlord testified that with 2 week's late notice and no response from applicants for occupancy February 01, they determined they acted prudently to stem further losses by accepting – after the 3rd. week of January - the only application for February 2014 - a new tenancy for February 24, 2014 - rather than for a later date.

The tenant argues that they do not believe the landlord could not find a tenant for February 01, 2014, and the landlord failed to sufficiently mitigate losses of revenue. The tenant's testimony is that had the landlord continued their advertising efforts after the 3rd. week of January the landlord would likely have fully mitigated losses of revenue for the entire month of February, 2014.

Analysis

On preponderance of all the evidence in this matter, I have reached a Decision upon the following findings.

I find the tenant ended the tenancy without providing the landlord with the prescribed Notice to end the tenancy in accordance with **Section 45** of the Act, which in relevant part states as follows,

Tenant's notice

- 45** (2) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

I find the tenant failed to provide the landlord with legal notice under the Act to end the tenancy as required by Section 45. However, I find that while the Act requires tenants to give one *full month's* notice that they are vacating, the Act does not attach a penalty for failing to do so or automatically entitle the landlord to loss of revenue. That is, there is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of income for the month following the month in which they give their notice. However, **Section 7** of the Act *does* provide as follows:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As a result of the tenant's non-compliance with the tenancy agreement or the Act, I accept the landlord's evidence that under the circumstances with which they were presented the landlord took immediate steps and did what was *reasonable* to minimize and avert future losses of revenue for themselves and avert a greater liability for the tenant, which resulted in securing a new tenancy for February 24, 2014. On all the evidence provided in this matter, I find the landlord has met the above test for loss. I find the landlord has provided sufficient evidence to support their claim and as a result are owed compensation for loss of revenue in the mitigated amount of **\$1437.50**. I find the landlord is further owed the agreed amount of **\$75.00** for an unreturned key fob. The landlord is also entitled to recovery of the **\$50.00** filing fee. The security deposit will be off-set from any award made herein.

Calculation for Monetary Order

Loss of revenue	\$1437.50
Key fob	75.00
Filing fee	50.00

<i>Less applicable security deposit</i>	<i>-875.00</i>
Total monetary award to landlord	\$687.50

Conclusion

I Order that the landlord may retain the security deposit in the amount of \$875.00 in partial satisfaction of the claim and **I grant** the landlord an Order under Section 67 of the Act for the balance due of **\$687.50**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: June 30, 2014

Residential Tenancy Branch

