



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNR, FF

Introduction

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

- an Order of Possession for breach of an agreement with the landlord, pursuant to section 55;
- a monetary order for unpaid rent and utilities, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this teleconference hearing scheduled for 11:00 a.m., which lasted until 12:03 p.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 served the tenant with her amended Application for Dispute Resolution hearing package ("Application") on July 14, 2014 by way of registered mail to the tenant's forwarding address. She provided a Canada Post receipt and tracking number, as proof of service, with her Application. The landlord stated that the Application was returned back to her, unclaimed, and she provided a copy of the returned mail cover page, with her Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application on July 19, 2014, the fifth day after its registered mailing.

Preliminary Issues

At the outset of the hearing, the landlord confirmed that she was withdrawing her application for an order of possession for breach of an agreement with the landlord, as the tenant had already vacated the rental unit and the landlord made the application in error. Accordingly, the landlord's application for an order of possession is withdrawn.

In her Application, the landlord applied for a loss of rent and utilities, resulting from the tenant's breach of the fixed term tenancy agreement. However, the landlord did not state that she was specifically applying for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. She simply stated that she was applying for a monetary order for unpaid rent and utilities. I do not believe the landlord was aware that she should have applied for the loss as a result of the breach fixed term tenancy because the tenant had already vacated the rental unit, as opposed to unpaid rent and utilities which would have been while the tenant was still in the rental unit.

The landlord's Application clearly set out the specific damage amounts being sought for loss of rent and utilities and the purpose of claiming these losses. During the hearing, the landlord referred to a previous hearing ("previous hearing") which was conducted on February 8, 2013 (the file numbers for which appear on the front page of this decision), which heard Applications from both parties. The previous hearing decision awarded the landlord a loss of rent of \$2,100.00 from December 1, 2012 to February 14, 2013, with leave to reapply regarding the remaining rent. The tenant was present at this previous hearing.

Accordingly, I amend the landlord's Application to include relief sought for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. I make this amendment in accordance with my authority under section 64(3)(c) of the *Act*. I find that the tenant had notice of these claims at the previous hearing when the landlord was told to apply for utilities and was granted leave to reapply for a loss of rent, and through the landlord's Application for this hearing. I find that the tenant is not prejudiced by this amendment.

Issue(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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this tenancy began on July 1, 2012 and ended on November 30, 2012. She stated that this tenancy was a fixed term agreement for a one year

period to end on June 30, 2013. Monthly rent was payable in the amount of \$1,800.00 due on the first day of each month. A security deposit of \$1,000.00 was paid by the tenant for this tenancy. The tenant occupied a five bedroom house, owned by the landlord. The landlord received written notice from the tenant on November 2, 2012, that she would be vacating the rental unit on November 30, 2012.

The previous hearing decision awarded the tenant a monetary order of \$11,675.00, for return of her pre-paid rent and security deposit, taking into account the \$2,100.00 ordered in favour of the landlord. The landlord testified that she has not complied with the order of the arbitrator from the previous hearing, to pay the tenant the amount of \$11,675.00. She stated that she has not been served with the monetary order by the tenant. She further testified that she advised the tenant after the hearing, via email, that she would not be paying her the amount ordered until the landlord had reapplied and participated in this further RTB hearing. She stated that she wanted to determine how much she was owed, rather than repaying the tenant and then asking for additional monies to be returned. The tenant replied to the landlord via email, stating that she did not agree to that.

The landlord is seeking \$929.38 in total for a loss of utilities, for the period from December 28, 2012 to April 30, 2013, from the tenant. She stated that she did not apply for these utility amounts at the previous hearing, because she was not aware that she could do so. She testified that the arbitrator at the previous hearing advised her that she could apply for unpaid utilities and so she has decided to do so for this current hearing.

The landlord testified that she was required to pay for utilities in the above amount, due to the tenant breaching her tenancy agreement and ending the lease early. She provided a copy of the utility bills with her Application. She stated that she is not claiming for unpaid utilities for May 2013, as her friend was going to rent this rental unit but backed out at the last minute, and so she did not want to bother claiming for this amount at this hearing. She stated that she is only claiming for utilities from December 28, 2012 until April 30, 2013, as she assumes all amounts were paid by the tenant before December 28, 2012, since she did not receive any invoices for unpaid amounts.

The landlord testified that the tenant paid for utilities, as per the tenancy agreement, in addition to the rent amount. She stated that the tenant had the utilities in her name and paid the amounts directly to the provider. The landlord stated that the tenant paid all required utility amounts during her tenancy there, from July 1, 2012 to November 30, 2012. The landlord testified that she was notified by the tenant in advance, that the utilities would be cut off from December 7, 2012 forward and that she should reconnect

this service, given the cold winter months. The landlord stated that the utilities automatically transferred over to her name and continued without interruption.

The landlord stated that the tenant did not occupy the house or use the utilities from December 28, 2012 to April 30, 2013. However, she stated that she was required to pay for utilities during the time that the house was unoccupied, in order to ensure that the pipes would not freeze and the house would be livable for new renters. The landlord stated that her daughter, who lived locally, checked on the house every week and ensured that all the lights were off and the heater was set to 12 to 13 degrees Celsius during the cold months. The heating was reduced in the warmer weather. She claimed for \$250.17 from December 28, 2012 to January 24, 2013, \$277.60 from January 24 to February 27, 2013, \$243.42 from February 27 to April 5, 2013 and \$158.19 from April 5 to 30, 2013.

The landlord is seeking \$900.00 for half of February 2013 loss of rent and \$1,800.00 for each of March, April and May 2013 loss of rent, until the house was rented to the current new tenant on June 1, 2013. In total, she seeks \$6,300.00 in loss of rent from the tenant.

The landlord testified that contrary to the previous hearing written decision, she did not advertise her house at a higher price at any time after the tenant gave her notice to vacate. She stated that she continuously advertised her house for rent for \$1,800.00 online at the Kijiji website until the house was occupied by the current new tenant, on June 1, 2013. She stated that she did not advertise the house at a lower or higher price than \$1,800.00 throughout the advertisement period. This is despite the fact that the previous hearing decision explicitly stated that the landlord should have advertised her house at a lower rent for 1.5 months from January to mid-February 2013, in order to mitigate her losses, and deducted her loss of rent for that reason. The landlord said that she did not reduce the advertised rent price because she had 10 to 15 viewings for the house, and was satisfied that she would find a renter. She also looked at comparable size houses in the same neighbourhood that were advertised for \$2,000.00 to \$2,500.00 per month. She stated that she chose \$1,800.00 as the advertisement number based on her own insurance, mortgage costs and property taxes. She testified that her minimum costs are \$1,500.00 per month.

In the online Kijiji advertisement, which was not provided with her Application evidence, the landlord capitalized on the positive features of the house that is 5 bedrooms and 2.5 bathrooms. She stated that it was close to a school and in an elite neighbourhood. She stated that she did not advertise on any other websites besides Kijiji. She also relied on

word-of-mouth advertising through her own friends, family and co-workers, who she informed about her house for rent.

The landlord stated that she attempted to negotiate with at least three people for the rent amount, offering less than \$1,800.00 for rent. She stated that one person offered her \$1,000.00 per month, which she refused but counter-offered at another amount. The person did not rent the place. One of her friends, who was intending to rent the house around May 2013, was willing to pay the full \$1,800.00 but bought his own house instead and did not rent the house. The landlord negotiated with another prospective tenant around January or February 2013, who was also close to renting the place for March 1, 2013, but then decided to move to another place in a different area of the city, instead.

The landlord began negotiating with the current new tenant in April 2013, who offered \$1,300.00 and the landlord counter-offered with \$1,500.00. The current new tenant now rents the house for \$1,500.00, beginning on June 1, 2013, on the basis that this covers the landlord's minimum costs for the house. The tenant must do and pay for her own handy work if things break or fail to work, including changing light bulbs, fixing the toilet, and the like.

The landlord stated that she was renting her house for \$1,850.00 per month to other tenants for 2.5 years prior to the tenant in this Application, occupying the rental unit.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

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 landlord to prove on a balance of probabilities that the tenant caused the loss of rent and utilities by breaching her fixed term tenancy agreement.

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 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.

I find that the landlord is entitled to a nominal monetary award for a loss of utilities from the tenant. Although the tenant was not occupying the house from December 28, 2012 to April 30, 2013, the period during which the landlord claims a loss of utilities, the tenant breached the tenancy agreement and ended the lease early, causing utility losses to the landlord. Therefore, the tenant is responsible for a minimal cost to maintain the landlord's utilities. The landlord testified that minimal heating was required to ensure that the pipes did not freeze. The house would have to be liveable for the next tenants and to ensure the house could be shown at all times to potential tenants, which the landlord said was done.

However, the landlord likely could have minimized her utility costs further, as her utility bills were significantly high even in the spring months of March and April 2013, likely indicating that more than just minimal heating and other utilities were being used. The utility bills were each over \$240.00 per month from December 2012 to March 2013. Only the April 2013 utility bill was under \$160.00 because it was for the partial month from April 5 to 30, 2013. I find that the landlord should have included these utility losses in her claimed amounts at the previous hearing in February 2013. Since the period of loss from December 28, 2012 to February 14, 2013 was dealt with at the previous hearing, even though the landlord did not apply for a loss of utilities specifically, I find that the landlord is only entitled to a loss of utilities from February 15, 2013 to April 30, 2013. Since these months are generally warmer as compared to December and January, I find that minimal heating and utility amounts would be lower. I find that the landlord should have mitigated her losses and kept her utility costs lower. Accordingly, I find that the landlord is entitled to a monetary award of \$200.00 for a loss of utilities, for the entire period from February 15, 2013 to April 30, 2013. The landlord did not submit utility bills after April 30, 2013, stating that she would not be claiming for May 2013, as she did not want to since her friend was supposed to move into the house at that time, but he did not.

Residential Tenancy Policy Guideline 5 "Duty to Minimize Loss" states that a landlord has a legal obligation to do whatever is reasonable to minimize the damage or loss. She must take reasonable steps to keep the loss as low as reasonably possible and will

not be entitled to recover compensation for loss that could reasonably have been avoided. For claims for loss of rental income, the landlord must make reasonable efforts to re-rent the rental unit at a reasonably economic rent.

I recognize that the landlord is now accepting a \$300.00 lower rent per month from her new current tenant. She stated that after a few people backed out from renting her house at the last minute, she was eager to rent her place and agreed to this lower price of \$1,500.00 rent per month, particularly as the current new tenant was willing to complete her own required fix-ups in the house, if necessary.

I find that the landlord's efforts to re-rent the premises were insufficient. The landlord gave sworn evidence that she placed a single advertisement on one website for the entire duration of advertising. I find that there are many rental websites where a landlord can advertise a rental unit. I also find that the landlord could have made use of print advertising, such as in the local or provincial newspapers. The landlord did not provide me with a copy of her online advertisement but described it to me from her memory. I also find that the landlord could have reduced her rental asking price in her online advertisement, as many potential renters screen rental units based on asking prices and are not aware if landlords are willing to negotiate.

I find that the landlord was well aware that she should have attempted to reduce her rent price, even for a short time, to mitigate her loss. The previous hearing decision on February 8, 2013, made clear that the landlord was being awarded a reduced amount for loss of rent for failing to advertise at a lower price. The landlord had notice, through this previous decision, to reduce her rent and chose not to do so. The landlord was satisfied that she had enough viewers for her house. She had a minimum asking price of \$1,500.00, which she eventually accepted from the current new tenant. However, she did not advertise \$1,500.00 or another price between \$1,500.00 and \$1,799.99 for her house.

The landlord stated that she negotiated with potential tenants about the rental price. However, potential renters may not have known that the price was negotiable. She stated that her asking price was based on her own costs, rather than advertisements for other similar houses in similar locations. Although the landlord stated that there were similar houses in the area renting for higher than \$1,800.00, I find that this may have been due to a number of other factors, including the age, design and state of repair of the house. Also, as per the previous hearing decision, the landlord had repeated issues with mold in the house, which may have detracted some potential renters, if they were aware of this fact or saw the mold upon viewing the house. The landlord, as owner of

the house, did not attend personally to show her house, as she lives out of town, and left it to her daughter to do so, which may have detracted potential renters as well.

The landlord admitted that it is difficult to rent a house in the winter season in general, as most people prefer to move in better weather, such as spring. The landlord admitted that this particular location can be fairly cold in the winter months, a factor which may have prevented potential renters from renting the house during that time.

For the above reasons, I find that the landlord is entitled to \$450.00 for a loss of rent from February 15 to 28, 2013, as the previous hearing decision already awarded a loss of rent up to February 14, 2013. I find that the landlord is also entitled to \$900.00 for each of March, April and May 2013. In total, I award \$3,150.00 for loss of rent to the landlord from February 15, 2013 to May 31, 2013. I award these amounts because I find that the landlord did not fully mitigate her losses as required by section 7(2) of the Act. I find that she should have reduced her rent further while advertising online and as recommended in the previous hearing decision, particularly given that she accepted a \$300.00 reduced rent per month from the current new tenant and she expected at least a minimum of \$1,500.00 rental per month, to cover her costs in any event. I also find that she should have increased her advertisement presence online and in print and that there were market, economy and weather forces relevant to her ability to rent her house, which were out of the tenant's control.

As the landlord was successful in this application, I find that she is entitled to recover the \$50.00 filing fee paid for this application from the tenant.

I award a monetary order in the landlord's favour in the amount of \$3,400.00 against the tenant.

The order of the arbitrator in the previous hearing remains in effect.

Conclusion

The landlord's application for an order of possession for breach of an agreement with the landlord is withdrawn.

I issue a monetary order in the landlord's favour in the amount of \$3,400.00 against the tenant as follows:

Item	Amount
February 15 to 28, 2013 rent loss	\$450.00
March 2013 rent loss	900.00
April 2013 rent loss	900.00
May 2013 rent loss	900.00
Loss of utilities from February 15, 2013 to April 30, 2013	200.00
Recovery of Filing Fee for this application	50.00
Total of Monetary Order	\$3,400.00

The landlord is provided with this monetary order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: December 19, 2014

Residential Tenancy Branch

