



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing concerns an application by the landlords for a monetary order as compensation for unpaid rent / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. The landlords attended and gave affirmed testimony. Neither tenant appeared.

The landlords testified that the application for dispute resolution and the notice of hearing (the “hearing package”) was served by way of registered mail on each tenant, and that both items were accepted at the Post Office on October 20, 2014. The landlords also testified that the items were unclaimed by the tenants. Based on the affirmed / undisputed testimony of the landlords I find that the tenants were served in accordance with sections 89 and 90 of the Act which speak, respectively, to **Special rules for certain documents** and **When documents are considered to have been received**.

Issue(s) to be Decided

Whether the landlords are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy was from July 31, 2014 to July 31, 2015. Monthly rent of \$2,000.00 was due and payable in advance on the first day of each month, and a security deposit of \$1,000.00 was collected.

By email dated September 17, 2014 the tenants gave notice to end tenancy effective “before October 15th.” Subsequently, the tenants made no payment toward rent for October and they vacated the unit on October 15, 2014. Arising from online advertising, new renters were found for the unit effective from December 01, 2014.

Analysis

Section 26 of the Act addresses **Rules about payment and non-payment of rent**, in part:

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act addresses **Tenant's notice**, in part:

45(2) A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

Section 7 of the Act addresses **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.

(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.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlords, the various aspects of the application and my findings are set out below.

\$2,000.00: *unpaid rent for October 2014*

In the absence of any evidence that the tenants had a right under the Act to deduct all or a portion of rent due and payable for October 2014, I find that the landlords have established entitlement to the full unpaid amount claimed.

\$2,000.00: *unpaid rent / loss of rental income for November 2014*

I find that the tenants ended the fixed term tenancy “earlier than the date specified in the tenancy agreement as the end of the tenancy.” I also find that the landlords undertook to mitigate the loss of rental income by advertising for new renters in a timely fashion. In the result, I find that the landlords have established entitlement to the full amount claimed.

\$350.00: *cable connection*

In the absence of sufficient documentary evidence in support of this particular cost, this aspect of the application is hereby dismissed.

\$4,000.00: *(2 x \$2000.00) penalty of 2 months’ rent for early termination of tenancy;*
\$1,050.00: *cost(s) of finding new renters in the event of early termination of tenancy*

Residential Tenancy Policy Guideline # 4 speaks to “Liquidated Damages,” in part:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an Arbitrator will consider the circumstances at the time the contract was entered into.

Neither of the above 2 claims arises from any provision in the tenancy agreement that is clearly identified as “liquidated damages.” Further, while the landlords identified the cost of finding new renters as \$1,050.00 during the hearing, the tenancy agreement does not specify a particular sum (“genuine pre-estimate,”) rather it refers to “the cost of re-renting the property and any Vacancy losses till the end of the term.” Further, I find that the amount of 2 months’ rent is excessive and constitutes a penalty as opposed to a liquidated damages provision. Additionally, as above, I have found that the landlord has established entitlement to loss of rental income for the month of November 2014.

Following from all of the above, these aspects of the application are hereby dismissed.

\$400.00: *(\$200.00 + \$200.00) move-in / move-out fees*

In the absence of any documentary evidence that the parties had entered into an agreement, pursuant to which the tenants were responsible for paying either or both of these fees, this aspect of the application is hereby dismissed.

\$100.00: *filing fee*

As the landlords have achieved some success with their main application, I find that they have also established entitlement to recovery of the full filing fee.

Sub-total entitlement: \$4,100.00 (\$2,000.00 + \$2,000.00+ \$100.00)

I order that the landlords retain the security deposit of **\$1,000.00**, and I grant the landlords a **monetary order** for the balance owed of \$3,100.00 (\$4,100.00 - \$1,000.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlords in the amount of **\$3,100.00**. This order may be served on the tenants, filed in the Small Claims 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: May 13, 2015

Residential Tenancy Branch

