



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANSON REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNR, O, FF

Introduction

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

- a monetary order for unpaid rent, damage or loss pursuant to section 67;
- another remedy or compensation under the *Act*; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord testified that both tenants were served with a copy of the landlord's dispute resolution hearing package by registered mail on December 7, 2014. The tenants both confirmed receipt of the package and Notice for Hearing. Based on the sworn testimony of the parties, and pursuant to section 89 of the *Act*, I find that both tenants have been served the landlord's dispute resolution hearing package.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage or loss arising out of this tenancy?

Is the landlord entitled to another unspecified remedy under the *Act*?

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

Background and Evidence

Both parties agreed that this tenancy began on or about October 1, 2012 with a rental amount of \$2800.00 per month. The tenants' current rental amount is \$2700.00 payable on the first of each month. Both parties agreed the rental amount was reduced after 2 years of tenancy. The landlord testified that she continues to hold a \$1400.00 security deposit paid by the tenants on September 7, 2012 when the tenancy agreement was signed. The landlord submitted a copy of the tenancy agreement as evidence.

The landlord sought to recover \$149.47 from the tenants. The tenants still reside in the rental unit. The landlord testified that, in November 2014, the tenants provided a cheque on an account that had insufficient funds. The landlord testified that the cheque was returned. The landlord also testified, supplying a copy of the cheque for evidence, that the cheque was drawn on a U.S. bank account. The landlord testified that, as a result of the returned U.S. funds cheque, they suffered a loss of \$ 149.47.

Tenant MY testified that both parties suffered a loss as a result of this situation. He testified that this circumstance was unusual as he suffered a heart attack while traveling in China his wife was forced to leave Canada quickly to be by his side. He testified that his adult son was left with a hastily drafted cheque from his wife. He testified that, in these extreme circumstances, a US cheque was provided by the son to the landlord, resulting in a returned cheque. Tenant MY submitted that his bank charged him a penalty for returning this cheque.

Tenant MY submitted that any loss suffered by the landlord for this matter was a result of their own failure to properly accept the rental cheque. He submitted that, in the course of the process of accepting the cheque, the landlord should have been aware that the cheque was drawn on a US account, which was not the norm for the tenants. He also submitted that, beyond an appropriate fee for a returned cheque, the landlord sought an amount that would enrich them based on some of the rental amount to US funds and back again. He testified that he is not prepared to pay the landlord's costs in the circumstances.

Other documents submitted by the landlord included a letter to the tenants dated November 20, 2014. That letter stated, in part:

On November 13, we are told by our bank that your cheque is in fact a US\$ cheque, therefore, after exchange conversion, there is a credit of C\$295.92 on top of the November rent amount of C\$2,700 deposited to our trust account on November 7.

However, today we receive a notice from our bank advising that your US\$ cheque is returned due to Insufficient Funds. Again, after exchange conversion, the amount debited from our rental trust account is C\$3,120.39.

In the letter, the landlord requested that the tenants supply a cheque in the amount of \$2849.47, indicating that \$2700.00 rent was outstanding as well as a \$25.00 "NSF Charge" and \$124.47 "loss due to exchange conversion". The landlord also submitted an accounting statement with respect to the trust account for this tenancy. It appears to show a positive balance of \$124.47 after the tenant replaced his \$2700.00 rent cheque.

The tenants do not deny that a rent cheque needed to be replaced but does deny that the landlord has suffered any loss with respect to this tenancy.

Analysis

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.

The landlord bears the burden of proof to show that loss exists as a result of this circumstance. It is agreed by the parties that the rent has been replaced and does not remain outstanding. The landlord provided bank documentation to justify their claim for a monetary amount from the tenants. However, I find that neither their testimony nor their documentation provides clear evidence on a balance of probabilities that the landlord suffered any additional loss as a result of this error by the tenants. I find that their testimony did not establish that there was actual loss as a result of a two way conversion of the US cheque provided by the tenants.

The tenants concede that his error resulted in a temporary loss of rental income for the landlord. The tenants made immediate efforts to ensure that loss was recovered. The fact that the US cheque initially provided by the tenants had to be converted to Canadian funds and then converted back again when the tenants' US account was found to have insufficient funds did not, I find, result in any loss to the landlord. As the landlord's details of dispute resolution within their application included recovery of the "NSF fee" in this matter and that the nsf fee is a documented cost applicable under the tenancy agreement, I find the landlord is entitled to the \$25.00 fee.

As the landlord was partly successful in this application, I grant their application to recover the filing fee in this matter.

Conclusion

I issue a monetary order in favour of the landlord in the amount of \$75.00.

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 16, 2015

