



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although it lasted approximately 42 minutes. 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 confirmed that "advocate KB" had authority to provide submissions on his behalf at this hearing.

The landlord testified that he personally served the tenant with the landlord's application for dispute resolution hearing package ("Application") on December 19, 2014, at the tenant's place of employment. Advocate KB testified that she witnessed this service. In accordance with sections 89 and 90 of the Act, I find that the tenant was served with the landlord's Application on December 19, 2014.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenant's security deposit?

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 October 15, 2014 and ended on November 26, 2014. The landlord stated that this tenancy was for a fixed term to end on April 30, 2015, as per the tenancy agreement. The landlord provided a copy of the tenancy agreement with his Application. The landlord confirmed that a security deposit of \$450.00 was paid by the tenant and the landlord continues to retain this deposit.

The landlord indicated that he initially applied for a monetary order of \$4,665.00, which included a loss of rent for five months from December 2014 to April 2015. During the hearing, the landlord stated that he was amending his claim to seek \$1,350.00 total, including \$900.00 for one month's rental loss and \$450.00 for cleaning, advertising, and Application costs.

The landlord stated that the tenant ended the fixed term tenancy early and did not provide sufficient notice to vacate the rental unit. The landlord seeks a loss of rent of \$900.00 for December 2014. The landlord testified that the tenant provided him notice on November 26, 2014, by way of an email, that he had already left the rental unit and was not returning. The landlord stated that he spoke with the tenant between November 26 and 29, 2014, by way of email. The landlord provided a copy of these emails with his Application. The landlord stated that after unsuccessful attempts to contact the tenant and resolve the situation, he and advocate KB posted advertisements online on two free websites from December 4 to 14, 2014 and also advertised by word-of-mouth. The landlord provided a copy of one of the online advertisements with his Application. The landlord confirmed that a new tenant was found on December 14, 2014 and that this new tenant began renting the unit as of January 1, 2015.

The landlord seeks to retain the tenant's entire security deposit of \$450.00. The landlord stated that he obtained written permission from the tenant to keep the entire security deposit, by way of an email, dated November 26, 2014, from the tenant to the landlord. The landlord provided a copy of a move-in condition inspection report, which he said was completed on October 15, 2014. The landlord stated that no move-out condition inspection or report was completed because the tenant abandoned the rental unit and could not be present for the inspection. The landlord provided a copy of this email with his Application.

The landlord stated that he paid advocate KB \$262.50 for advertising the rental unit, responding to inquiries, and performing showings of the rental unit. Witness KB

confirmed that she charged the landlord 10 hours total for this work at \$25.00 per hour, plus \$12.50 for GST. Advocate KB confirmed that she provided the landlord with an invoice and breakdown for the above amount. The landlord stated that it was an oversight that he did not submit this invoice with his Application. The landlord also claims \$134.96 for cleaning costs, \$4.40 for printing and photocopying documents for this hearing and \$50.00 for the filing fee for his Application.

Analysis

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

Although the landlord indicated that the tenant provided written permission to the landlord to retain his security deposit for cleaning and other costs, as well as late notice to end this tenancy, I find that this notice is not valid as it was sent by way of email to the landlord. Proper written notice can only be delivered by one of the methods outlined in section 88 of the *Act*, which does not include email.

Loss of Rent

I find that the landlord and tenant entered into a fixed term tenancy for the period from October 15, 2014 to April 30, 2015, as per the tenancy agreement.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

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.

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If he does, then he may be liable for rental losses incurred by the landlord for breach of the fixed term agreement. In this case, the tenant vacated the rental unit by November 26, 2014, before the completion of the fixed term on April 30,

2015. As such, the landlord is entitled to compensation for the loss he incurred as a result of the tenant's failure to comply with the terms of the tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. 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 undisputed evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises soon after receiving notice that the tenant had already vacated the rental unit. The landlord posted online rental advertisements and provided a copy of an advertisement. The landlord was able to find a new tenant by December 14, 2014, to re-rent the unit as of January 1, 2015. As such, I am satisfied that the landlord has discharged his duty under section 7(2) of the *Act* to minimize his loss. The landlord is only claiming for one month of rental loss for December 2014, the period during which the property could not be re-rented due to the tenant's breach. Accordingly, I find that the landlord is entitled to \$900.00 for a loss of December 2014 rent from the tenant.

Other Losses

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 or 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 claimant must also provide evidence under section 7(2) of the *Act* of the steps taken to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant caused losses to the landlord, including cleaning, advertising and showing costs.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for \$262.50 in advertising and showing costs, without leave to reapply. The landlord did not provide a copy of the invoice for this amount. This invoice was in the landlord's possession at the time of this hearing and was available to the landlord well in advance of this hearing. The landlord's application was filed on December 9, 2014 and

this hearing was held on July 14, 2015. The landlord had ample time to submit the invoice for this hearing. Further, the tenant did not have notice of this claimed cost because the landlord did not provide a specific amount or an explanation in his Application.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for \$134.96 for cleaning costs, without leave to reapply. I find that the landlord provided conflicting information and insufficient evidence regarding this cost. The landlord did not provide any photographs of the condition of the rental unit either before this tenancy or after the tenant vacated. The landlord initially forgot that he completed the cleaning himself and then confirmed that he cleaned after advocate KB reminded him during the hearing. Advocate KB also testified that she cleaned the rental unit with the landlord. The landlord provided a handwritten note on the rental unit online advertisement included with his Application package, that claimed \$165.00 total for 11 hours of cleaning at \$15.00 per hour. During the hearing, witness KB testified that the landlord was only claiming \$134.96 for this cleaning, that no invoice was provided because the cleaning was done privately by them and that only the remaining balance from the security deposit was used to account for this amount, after deductions were made for the filing fee, hearing-related costs and advertising/showing costs.

The landlord seeks \$4.40 for printing and photocopying his written evidence for this hearing, which he had to provide to the Residential Tenancy Branch ("RTB") and the tenant. The only hearing-related costs that are recoverable under section 72 of the *Act*, are for filing fees. Accordingly, the landlord's claim for \$4.40 for hearing-related costs is dismissed without leave to reapply.

The landlord continues to hold the tenant's security deposit of \$450.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$450.00 in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was mainly unsuccessful in this Application, I find that he is not entitled to recover the \$50.00 filing fee paid for his Application. I dismiss the landlord's Application to recover the filing fee, without leave to reapply.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$450.00 against the tenant as follows:

Item	Amount
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Loss of December 2014 rent	\$900.00
Less Security Deposit	-450.00
Total Monetary Award	\$450.00

The landlord is provided with a monetary order in the amount of \$450.00 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.

The remainder of the landlord's application is dismissed without leave to reapply.

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: July 15, 2015

Residential Tenancy Branch

