



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding E Y PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD MNDC FF
 MNSD FF

Preliminary Issues

The Landlord submitted evidence that the Tenant was personally served an amended application on July 15, 2015 which listed the corrected unit number of the rental. The Tenant's application listed the Landlord's office address as the rental unit address instead of the rental unit address.

Based on the above, and the undisputed submissions of the Landlord, I granted the Landlord's request and amended the style of cause on the front page of this Decision to reflect the correct unit number and address of the rental unit, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on July 08, 2015, seeking a Monetary Order for unpaid rent or utilities; money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for their application.

The Tenant filed on September 3, 2015, seeking a Monetary Order for the return of his security deposit and a refund of all rent.

Service of the Landlord's application, hearing documents, and evidence was done in accordance with section 89 of the *Act* as they were initially served by registered mail on July 10, 2015. The package was returned to the Landlord and was subsequently served upon the Tenant in person on July 15, 2015.

The hearing was conducted via teleconference and was attended by the Landlord. No one appeared at the teleconference hearing on behalf of the Tenant; despite the Tenant being served with notice of the Landlord's application in accordance with the Act and

despite having their own application for dispute resolution scheduled for the same hearing date and time. Therefore, I proceeded in the absence of the Tenant.

Issue(s) to be Decided

1. Should the Tenant's application be dismissed with or without leave to reapply?
2. Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a written fixed term tenancy agreement that began on June 1, 2015 and was scheduled to end on May 31, 2016. Rent of \$850.00 was payable on or before the first of each month. On May 28, 2015 the Tenant paid \$425.00 as the security deposit plus \$50.00 as the key FOB deposit.

The tenancy agreement included a liquidated damages clause at section 5 which required the Tenant to pay the Landlord \$400.00 as liquidated damages. The clause states, in part, that:

...if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay the landlord the sum of \$400- as liquidated damages and not as a penalty for all costs associated with re-renting the unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

On June 5, 2015 the Tenant served the Landlord with notice to end his tenancy effective the end of June 2015. On June 29, 2015 each party was represented at the move out condition inspection. The Tenant provided his forwarding address on June 29, 2015 as written on the bottom of the condition inspection report form.

The Landlord testified that they were not able to re-rent the unit until August 1, 2015; despite them advertising the unit as soon as the Tenant gave his notice to end the tenancy.

The Landlord submitted documentary evidence that the Tenant signed the Security Deposit Statement giving the Landlord authorization to deduct the \$400.00 liquidated damages plus the \$850.00 lost rent for July 2015 from the \$425.00 security deposit and \$50.00 key FOB deposit. The statement further indicates that there was a balance of 775.00 owed to the Landlord.

The Landlord filed their application seeking the aforementioned liquidated damages and unpaid rent or loss of rent for July 2015 and requested that the award be offset against the security deposit.

There was no evidence submitted in support of the Tenant's application, as no one was in attendance on behalf of the Tenant.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 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.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 45 (2) of the Act stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

I accept the undisputed evidence that the Tenant gave notice to end his tenancy effective the end of June 2015, which was prior to the end of the fixed term which was not scheduled until May 31, 2016. The Tenant vacated the property by June 29, 2015 and failing to continue to pay rent which was in breach of the tenancy agreement and in breach of section 45(2) of the *Act*.

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.

Based on the undisputed evidence, I accept the Landlord's submission that the Tenant gave notice to breach the tenancy agreement and vacated the property with no intention

of upholding his financial requirements to the tenancy agreement. Accordingly, I find the Landlord provided sufficient evidence to prove their claim for liquidated damages and I grant them monetary compensation in the amount of **\$400.00**, pursuant to section 67 of the *Act*.

As indicated above, I found the Tenant ended this tenancy in breach of section 45(2) of the *Act*. That breach caused the Landlord to suffer a loss of rent for July 2015 as the unit was not re-rented until August 1, 2015. As such, I find the Landlord submitted sufficient evidence to prove their claim for loss of July 2015 rent and grant their claim in the amount of **\$850.00**, pursuant to section 67 of the *Act*.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

Monetary Order – This application meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Liquidated Damages	\$ 400.00
Loss of July 2015 Rent	850.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,300.00
LESS: Key FOB Deposit \$50.00 + Interest \$0.00	-50.00
LESS: Security Deposit \$425.00 + Interest \$0.00	<u>-425.00</u>
Offset amount due to the Landlord	<u>\$ 825.00</u>

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenant, the telephone line remained open while the phone system was monitored for nine minutes and no one on behalf of the applicant Tenant called into the hearing during this time. Accordingly, in the absence of any submissions from the applicant Tenant, I order the Tenant's application dismissed, without liberty to reapply.

Conclusion

The Landlord was successful with their application and was granted monetary compensation in the amount of \$1,300.00. The monetary award was offset against the Tenant's \$50.00 Key FOB deposit and their \$425.00 security deposit leaving a balance owed to the Landlord of **\$825.00**.

The Landlord has been issued a Monetary Order in the amount of **\$825.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with Small Claims Court and enforced as an Order of that Court.

The Tenant did not appear at the scheduled hearing and his application was 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: December 22, 2015

Residential Tenancy Branch

