



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

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

- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both tenants attended the hearing. The landlord RG (the landlord) attended on behalf of both landlords. All in attendance were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The parties admitted service of documents. The landlords consented to the admission of the tenants' late-served evidence.

Order for Evidence After Hearing

Some of the tenants' evidence as provided to the Residential Tenancy Branch was illegible.

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that I may direct that evidence be submitted after the commencement of a hearing. Pursuant to Rule 3.19, I ordered the tenants to submit a legible copy of the text message evidence. I received a transcribed copy of the text messages.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

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

This tenancy began 1 March 2014 and ended on or about 15 January 2015. Monthly rent of \$2,400.00 was due on the first. The tenants' security deposit in the amount of \$1,200.00 was used to compensate the landlords for the tenants' use of the rental unit in January.

The parties entered into a written tenancy agreement. The agreement was signed by the parties on 27 February 2014. The terms of the tenancy provided for an initial term of one year ending 28 February 2015.

Clause 1.2 of the tenancy agreement sets out the services that were included in rent. Water was not included.

Clause 3.1 sets out a liquidated damages clause in the event the tenants terminate the lease early. Liquidated damages are set at \$1,200.00 and are for the cost of advertising and re-renting. The landlords have not sought to enforce this clause.

Clause 3.2 of the tenancy agreement puts the tenants on notice that the landlord will seek a rent loss in the even the tenant terminates early:

In the event of Early Termination....the tenant is responsible for any other damages or loss sustained by the Landlord, including but not limited to unpaid rent, los of future rent, and compensation for damage ot the Premises. The Landlord's right to claim damages against the Tenant includes recovering the difference between what rent the Landlord would have ordinarily received from the Tenant under this Lease and what the Landlord was actually able to re-rent the Premises for the balance of the un-expired original Term or subsequent term.

Clause 3.2 is initialed by both tenants.

Clause 5.3 sets out that the landlords are responsible for "property taxes, and local or other assessments levied by any governmental authority on the Premises."

On 23 December 2014, the tenant WC provided the tenants' notice to end tenancy (the tenants' notice) by text message. The tenants' notice set out that they were ending the tenancy for financial reasons and would vacate the rental unit on or before 15 January 2015.

On 26 December 2014, the landlords posted the rental unit on an internet classified site. This advertisement was drafted with assistance from the tenants. The landlord testified that the landlords received a few responses. The landlords had a showing on 4 January 2015. Although parties attended the showing, the landlords were unable to secure a new tenancy.

On or about 14 January 2015, the landlords engaged the services of a property management company.

The landlord testified that the landlords made the decision to list the home for sale as they could not afford to keep the untenanted property. On or about 18 February 2015, the rental unit was listed for sale; however, the landlords were still actively seeking to re-rent the rental unit.

On 25 February 2015, the landlords secured a new tenant and immediately delisted the rental unit. The new tenancy began 1 March 2015 at monthly rent of \$2,600.00.

The landlord testified that he told the tenants that they would be responsible for the landlords' rental loss when the parties conducted the condition move out inspection.

The landlord testified that water charges for the rental unit are based on consumption. The landlord testified that the landlords have not received any payment towards the tenants' water use. The landlord testified that the rental unit was vacant for January and February 2014. The landlords provided the utility invoice for the rental unit from the municipality. The invoice establishes that the rental unit has a meter to measure water use. The invoice notes the following charges:

- \$83.61 for the period 1 January 2014 to 30 April 2014;
- \$497.01 for the period 1 May 2014 to 31 August 2014;
- \$54.00 for the period 1 September 2014 to 31 December 2014; and
- \$97.15 for the period 1 January 2015 to 30 April 2015.

The landlords have calculated the water cost attributable to the tenants as follows:

Item	Amount
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1 March 2014 to 30 April 2014	\$41.81
1 May 2014 to 31 August 2014	497.01
1 September 2014 to 31 December 2014	54.00
1 January 2015 to 30 April 2015	0.00
Tenants' Water Utility	\$592.82

The landlord testified that the tenants failed to return two garage door openers. The tenants admit that they did not return the openers. The landlords provided me with a printout of a garage door opener from a home repair store. The garage door openers cost \$59.99). The landlord testified that the garage door openers were of the type in the printout and that he spent at least \$120.00 to replace them.

The landlords submit that the time of year the tenants left made the rental unit more difficult to rerent. The landlords submit that they acted diligently to find new tenants.

The landlords submit that it is implied that the tenants will honour the terms of the lease and it is not something that he explicitly has to say.

The tenants submit that the landlords did not “make an honest” effort to rerent the rental unit. The tenants submit that the landlords should have hosted more showings of the rental unit. The tenants submit that the landlords should have notified them earlier that he intended to seek a rental loss for the unit. The tenants submit that the landlords were unable to rerent the rental unit because the rent was too high for the area. In particular, the tenants submit that the rental unit is in an undesirable area because cellular service is poor. The tenants submit that they did everything that they could to assist the landlords in securing new tenants.

The tenants submit that water consumption is not a cost for which tenants are normally responsible. The tenants submit that the responsibility for water cost is a “grey area” of the lease. The tenants suggest that water, as it is billed by the municipality, is covered by clause 5.3 and is thus the landlords' responsibly.

The landlords claim for \$4,312.82 on the following basis:

Item	Amount
January Rent Loss	\$2,400.00
February Rent Loss	2,400.00
Water	592.82
Garage Door Opener	120.00
Less Security Deposit	-1,200.00
Total Monetary Order Sought	\$4,312.82

Analysis

The landlords claim a rental loss for January and February. The parties agree that the security deposit was applied to the tenants' use and occupancy of the rental unit for the period 1 January 2015 to 15 January 2015.

I find that the landlords and tenants entered into a fixed term tenancy for the period 1 March 2014 to 28 February 2015.

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.

This means that a tenant cannot give notice to end the tenancy before the end of the fixed term. In this case, the tenants vacated the rental unit before the completion of the fixed term. The tenants have breached the Act and as a result the landlords experienced a loss.

Residential Tenancy Policy Guideline, "3. Claims for Rent and Damages for Loss of Rent" provides guidance in determining damages in an application such as the landlord's:

These principles apply to residential tenancies and to cases where the landlord has elected to end a tenancy as a result of fundamental breaches by the tenant of the *Act* or tenancy agreement. ...

If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of the tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant. The filing of a claim for damages for loss of rent and service of the claim upon the tenant *while the tenant remains in possession of the premises* is sufficient notice. Filing of a claim and service upon the tenant after the tenant has vacated may or may not be found to be sufficient notice, depending on the circumstances. Factors which the arbitrator may consider include, but are not limited to, the length of time since the end of the tenancy, whether or not the tenant's whereabouts was known to the landlord and whether there had been any prejudice to the tenant as a result of the passage of time. The landlord may also put the tenant on notice of the intent to make a claim of that nature by way of a term in the tenancy agreement.

[emphasis added]

I find that clause 3.2 of the tenancy agreement put the tenant on sufficient notice that the landlords would seek to recover its rent loss in the event the tenants terminated the tenancy agreement early. Further, the landlords informed the tenants on or about 13 January 2015 that they would be responsible for the rental loss incurred.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, regulations or a tenancy agreement, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The landlord has testified that the rental unit was not rerented until 1 March 2015. I find that the landlords have established a rental loss for the period 15 January 2015 to 28 February 2015 in the amount of \$3,600.00. This loss was the result of the tenants breaching their fixed-term tenancy agreement. The landlord testified as to various efforts that have been made on the landlords' behalf to rerent the rental unit. After considering all relevant evidence and submissions, I find that the landlords' efforts to rerent the unit were sufficient for the purposes of subsection 7(2) of the Act. In particular, the landlords acted diligently in posting the rental unit to the internet, seeking professional assistance, and taking recommendations from the tenants. The tenants did cooperate fully with the landlords' efforts to rerent, but ultimately the landlords were

not successful in attaining new tenants and did suffer a rental loss in the amount of \$3,600.00. On the basis of this evidence, I find that the landlords have proven they met their duty to minimise loss. As such, the landlord is entitled to the full amount of its proven loss: \$3,600.00.

The landlords seek recovery of the water utility costs in the amount of \$592.82.

I agree with the landlords that the tenancy agreement provides that the tenants will pay for the cost of water to the rental unit at clause 1.2. Clause 1.2 is more specific than clause 5.3 and specifically notes that water is not included in rent. By contrast, clause 5.3 makes no specific mention of water or other utility like cost. I find that the tenants are responsible for the cost of water attributable to their tenancy.

The landlords have provided an invoice to prove the cost of the water utility. Pursuant to section 67 of the Act the landlords must establish the monetary amount of the damage or loss. In this case, the landlords have submitted that the rental unit was empty for January and February 2014 and thus it is more than reasonable to attribute half the total cost of water for the period 1 January 2014 to 30 April 2014. On the basis that water use for January and February 2014 was negligible as the rental unit was vacant; I find that the landlords have proven their entitlement to \$41.61 for the period 1 March 2014 to 30 April 2014. The tenants were the only occupants of the rental unit for the period 1 May 2014 to 1 December 2014. I find that the landlords are entitled to compensation for the full amount of these months: \$592.82.

The landlords seek the replacement cost of the garage door openers in the amount of \$120.00. The garage door openers were provided as part of the tenancy. The tenants admit to failing to return the garage door openers.

Pursuant to paragraph 37(1)(b) of the Act, at the end of the tenancy a tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant and give access to the residential property.

I find that by failing to return the garage door openers, the tenants have breached paragraph 37(1)(b) of the Act. By failing to return the garage door openers the tenants caused the landlords a loss. The landlord testified that the landlords spent at least \$120.00 to replace the garage door openers. The landlords provided me with a print out of an equivalent opener that costs \$59.99. The tenants did not make any submissions with respect to this amount. I find that the landlords have proven their entitlement to \$120.00 in compensation for the tenants' failure to return the garage door openers.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$4,362.82 under the following terms:

Item	Amount
Rent Loss	\$3,600.00
Water Utility	592.82
Garage Door Openers	120.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$4,362.82

The landlords are provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) 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 subsection 9.1(1) of the Act.

Dated: December 14, 2015

Residential Tenancy Branch

