



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REGENT PARK PINNACLE REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

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

- a monetary order 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 the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 14 minutes. The landlord's agent, HX ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she is the property manager for the landlord company named in this application and that she had authority to represent it as an agent at this hearing.

The landlord testified that the tenants were each served with a separate copy of the landlord's application for dispute resolution hearing package ("Application") on December 17, 2015 by way of registered mail to the forwarding address provided by them in the move-out condition inspection report on December 3, 2015. The landlord provided two Canada Post receipts and tracking numbers with its Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's Application on December 22, 2015, five days after its registered mailing.

Issues to be Decided

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

Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary order requested?

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

Background and Evidence

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

The landlord testified regarding the following facts. This tenancy began on July 15, 2015 for a fixed term ending on July 31, 2016, after which the tenants were required to vacate the rental unit. The tenants vacated the rental unit on November 30, 2015 and returned the keys to the landlord on December 3, 2015 during the move-out condition inspection. Monthly rent in the amount of \$3,000.00 was payable on the first day of each month beginning on October 1, 2015. Prior to this date, the rent was \$3,300.00 as per the tenancy agreement. A security deposit of \$1,650.00 was paid by the tenants and the landlord continues to retain the deposit. A copy of the written tenancy agreement was provided for this hearing. Move-in and move-out condition inspection reports were completed for this tenancy.

The landlord agreed that she received a forwarding address from the tenants on December 3, 2015, on the move-out condition inspection report. The landlord confirmed that she did not have written permission to keep any amount from the tenants' security deposit. The landlord's application was filed on December 17, 2015.

The landlord seeks a monetary order of \$3,000 for December 2015 rental loss. The landlord also seeks to recover \$50.00 filing fee paid for its application.

The landlord said that the tenants provided notice to vacate the rental unit by November 30, 2015, by way of an email to the landlord on October 31, 2015. The landlord said

that she posted online rental advertisements on a free public website on November 1, 2015. The landlord did not provide as copy of any such advertisements. The landlord said that she conducted six showings of the rental unit. The landlord said that she advertised for the rental unit for \$3,000.00 rent per month and that it was offered for a fixed term of at least five months or longer, not on a month-to-month basis. The landlord said that she advertised the rental unit until November 24, 2015 when she found a new tenant to rent as of January 1, 2016. The landlord provided a copy of the new tenancy agreement with the new tenants, which was signed by both parties on November 27, 2015.

Analysis

Loss of Rent

Subsection 45(2) of the Act sets out how tenants 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 tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, the tenants could be liable to pay for a loss of rent to the landlord, in addition to other damages. In this case, the tenants vacated the rental unit on November 30, 2015, before the completion of the fixed term on July 31, 2016. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenants' failure to comply with the terms of the tenancy agreement and the Act.

Section 7(1) of the Act establishes that tenants who do not comply with the Act, Regulation or 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 tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises after receiving notice of the tenants' intention to vacate the rental unit. However, I find that the landlord failed to fully mitigate its losses. The landlord did not provide a copy of any online rental advertisements, only deleted postings. The landlord also advertised the unit for a fixed term of five months or longer, rather than a month-to-month basis, which may have impacted the ability to re-rent.

The landlord is claiming for one month's rental loss of \$3,000.00 for December 2015. Accordingly, I find that the landlord is entitled to \$2,700.00, a reduction of 10% from the claimed amount, on the basis that I find that the landlord failed to fully mitigate its losses.

As the landlord was mainly successful in this Application, I find that it is entitled to recover the \$50.00 filing fee from the tenants.

Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

The landlord did not have permission to retain any amount from the tenants' security deposit. The tenants vacated the rental unit on November 30, 2015 and provided a written forwarding address on December 3, 2015 on the move-out condition inspection report. The landlord applied on December 17, 2015, within 15 days of December 3,

2015, to retain the deposit. Therefore, I find that the tenants are not entitled to the return of double the value of their deposit.

The landlord continues to hold the tenants' security deposit, totalling \$1,650.00. Over the period of this tenancy, no interest is payable. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' entire security deposit in partial satisfaction of the monetary award.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,100.00 against the tenant(s). 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 19, 2016

Residential Tenancy Branch