



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VALLEY 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* (the Act) for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenants with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on April 21, 2016. The landlord confirmed that the tenants served their submitted documentary evidence to the landlord via Canada Post Registered Mail on June 4, 2016. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act, I deem that both parties have been properly served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled retain all or part of the security and pet damage deposit?

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 respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on December 1, 2015 on a fixed term tenancy ending on November 30, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated November 25, 2015. The monthly rent was \$1,650.00 payable on the 1st day of each month. A security deposit of \$825.00 and a pet damage deposit were paid on November 24, 2015. A condition inspection reports for the move-in was completed on November 30, 2015 and the move-out on April 4, 2016.

The landlord seeks a monetary claim of \$1,650.00 for unpaid rent for April 2016.

The landlord provided undisputed affirmed testimony that the tenant provided notice to end the tenancy on February 23, 2016 to end the tenancy on March 31, 2016. The landlord stated that the unit was immediately advertised to be re-rented. Both parties agreed that a new prospective tenant was found to begin the tenancy on April 1, 2016, but that the landlord reported that on March 31, 2016 that the new prospective tenants "backed out". The landlord stated that the rental unit was eventually re-rented for May 1, 2016.

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. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, both parties have confirmed that the tenants provided notice to vacate the premises on February 23, 2016 for March 31, 2016. A fixed term tenancy was signed

by both parties stating that the tenancy is a fixed term ending on November 30, 2016. Evidence of communication between the two parties showed that the end of tenancy was a result of ongoing issues with the rental premises and that the tenants would be responsible for the tenancy agreement until a new tenant was secured. Both parties confirmed that due to a prospective tenant "backing out" on March 31, 2016 and scheduling between the two parties, possession of the rental unit was not given back to the landlord until April 4, 2016.

Residential Tenancy Branch Policy Guideline #5, Duty to Minimize Losses state that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. In this situation the landlord has provided undisputed affirmed evidence that the landlord immediately began to re-rent the premises and that a prospective tenant was found to begin the tenancy on April 1, 2016. Unfortunately the new prospective tenant "backed out" and a new tenant was not secured until May 1, 2016.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring... Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

...In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

As such, I find that the tenants prematurely ended the fixed term tenancy on April 4, 2016 prior to the agreed upon date of November 30, 2016 based upon the undisputed affirmed evidence of both parties.

I also find that the landlord made reasonable efforts to mitigate possible losses by immediately advertising the premises for rent. The landlord cannot be found at fault for the prospective tenant from "backing out". As such, I find that the landlord has established a claim for loss of rental income for April 2016 of \$1,650.00.

The landlord testified that she continued to hold the tenants' \$825.00 security and \$825.00 pet damage deposits, plus interest, paid on November 25, 2015. Over that period, no interest is payable. The landlord has applied to retain both the security and pet damage deposits. Using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the combined \$1,650.00 security and pet damage deposits in satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$100.00 under the following terms:

Item	Amount
Landlord's Monetary Award	\$1,650.00
Offset Security/Pet Damage Deposits	-1,650.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$100.00

The landlord is 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 orders 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 21, 2016

Residential Tenancy Branch

