



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1395 WEST 14TH AVENUE HOLDINGS LTD.
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 tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 17 minutes. The landlord's agent, CS ("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 at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on January 12, 2016 and written evidence on March 21, 2016, by way of registered mail to the tenants' forwarding address provided in the move-out condition inspection report. The landlord provided a Canada Post receipt and tracking numbers. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on January 17, 2016 and written evidence on March 26, 2016, five days after their registered mailings.

Issues to be Decided

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

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application?

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 that this tenancy began on December 1, 2015 and was for a fixed term to end on November 30, 2016, after which the tenancy could continue on another fixed term or on a month-to-month basis. Monthly rent in the amount of \$1,600.00 was payable on the first day of each month. A security deposit of \$800.00 was paid by the tenant and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement and the landlord provided a copy for this hearing.

The landlord indicated that move-in and move-out condition inspections and reports were completed for this tenancy. The landlord provided a copy of both reports. The landlord stated that no written permission was given by the tenant to keep any part of his security deposit and an application to retain it was made by the landlord on January 8, 2016 and amended on March 22, 2016.

The landlord testified that the tenant vacated the rental unit on December 29, 2015, less than one month after beginning the tenancy. The landlord confirmed that the tenant provided an email, dated December 15, 2015, to move out of the unit. The landlord said that there were no cockroaches in the tenant's rental unit, only nearby units, contrary to what the tenant claimed. She maintained that she immediately attended to repairing two windows that were painted shut in the unit, despite the tenant's claims that the issue was not rectified or addressed in a timely manner. The landlord provided invoices showing the repairs made.

The landlord seeks a loss of rent of \$1,600.00 for January 2016 and \$800.00 from February 1 to 16, 2016. The landlord claimed that the unit was re-rented to a new tenant on February 17, 2016 and a copy of the new written tenancy agreement was provided for this hearing. The landlord claims for losses under clause 9 of the tenancy agreement which states that if the tenant ends his tenancy prior to the fixed term, the landlord has the right to claim for rental loss and liquidated damages.

The landlord also claims for liquidated damages of \$800.00 and to recover the \$50.00 filing fee paid for the application. The landlord stated that reasonable efforts were made to re-rent the unit after the tenant vacated on December 29, 2015. She said that the unit was advertised online on one free website. The landlord provided a number of emails from interested potential tenants. She explained that many showings of the unit were done and she spent time driving back and forth in order to show the unit to potential tenants.

Analysis

Loss of Rent

I find that the landlord and tenant entered into a fixed term tenancy for the period from December 1, 2015 to November 30, 2016.

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 a tenant cannot give notice to end the tenancy before the end of the fixed term. If he does, the tenant could be liable to pay for a loss of rent and liquidated damages to the landlord. In this case, the tenant vacated the rental unit on December 29, 2015, before the completion of the fixed term on November 30, 2016. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of his tenancy agreement and the Act.

Section 7(1) of the Act establishes that a tenant who does 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 tenant's 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 written notice of the tenant's intention to vacate the rental unit. The landlord posted an online rental advertisement, provided emails from interested parties, had multiple showings of the unit and ultimately re-rented it on February 17, 2016.

The landlord is claiming for rental loss from January 1 to February 16, 2016, the period during which the property could not be re-rented due to the tenant's breach. Clause 9 of the tenancy agreement states that the landlord may claim for rental loss if the tenant vacates prior to the end of the fixed term. I find that the tenant breached the fixed term tenancy agreement, vacated without proper notice to the landlord and that he is responsible for the losses suffered by the landlord. I find that the landlord showed that repairs were made in a timely fashion. I find that there was no material breach of the fixed term tenancy agreement by the landlord, such that the tenant could end the tenancy early.

Accordingly, I find that the landlord is entitled to \$2,400.00 in unpaid rent from January 1 to February 16, 2016. I make this finding on the basis that the above is a reasonable period of time to advertise, show and re-rent the rental unit.

Liquidated Damages

Residential Tenancy Policy Guideline 4 provides information regarding liquidated damages. 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, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

I find that the cost of re-renting a unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. In this case, the landlord posted a free online advertisement and showed the rental unit but could not recall how many showings were done and what costs were incurred for the travel. I find that the landlord did not show how the \$800.00 claimed for liquidated damages was a genuine pre-estimate of the loss. For the above reasons, I dismiss the landlord's claim of \$800.00 for liquidated damages without leave to reapply.

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

The landlord continues to hold the tenant's security deposit of \$800.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit of \$800.00 in partial satisfaction of the monetary award.

Conclusion

I order the landlord to retain the tenant's security deposit of \$800.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$1,650.00 against the tenant. 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.

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: August 29, 2016

Residential Tenancy Branch