



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MND MNDC MNSD FF

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for a monetary order for unpaid rent and for damage to the unit 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; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; obtain a return of all or a portion of her security deposit pursuant to section 38; authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing, although I waited until 2:00pm in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30pm. The two landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Landlord SS testified that the tenant was served with their Application for Dispute Resolution ("ADR") including the Notice of Hearing by registered mail on June 24, 2016. The landlords submitted a copy of the registered mail receipt sent originally to the tenant and, through a secondary registered mailing to the tenant's bankruptcy trustee to ensure that the tenant received the landlords' ADR. Landlord SS testified that she had contact with the tenant by way of his own ADR as well as through his trustee who confirmed receipt of the materials for the tenant. Based on all of the evidence provided, I find that the tenant was sufficiently served in accordance with section 89 and 90 of the *Act* with the landlord's ADR and evidentiary materials for this hearing.

With respect to the tenant's failure to attend this hearing, Rule 10.1 of the Rules of Procedure provides as follows:

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding 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 tenant's participation in this hearing to support his application and given the sworn evidence provided by the landlords at this hearing, **I order the tenant's application dismissed without liberty to reapply.**

Issue(s) to be Decided

Are the landlords entitled to a monetary order against the tenant?

Are the landlords entitled to recover the cost of their filing fee for this application?

Background and Evidence

This tenancy began on October 15, 2015 as a fixed term tenancy of 1 year and 2 weeks. The tenant paid a monthly rental amount of \$2500.00 on the 15th of each month. The landlord continues to hold a \$1250.00 security deposit paid by the tenant at the outset of this tenancy. The landlord claimed for damage or loss of property, money owed by the tenant, and to retain the tenant's security deposit towards any monies owed by the tenant.

At this hearing, the landlord testified that the tenant has now vacated the rental unit. Landlord SS ("the landlord") testified that some bar stools that had been provided to the tenant for his use during the tenancy were not returned left in the rental unit at the end of the tenancy. She testified that she replaced the bar stools at a cost of 434.41. She provided a receipt with respect to that cost. She testified she did not know how many years old the bar stools were. She testified that they matched a dining room table that she currently has in storage.

The landlord testified that the tenant did not complete the fixed term tenancy as agreed and therefore she suffered a loss of rent for the remainder of the fixed term. The landlord testified that the tenant vacated the rental unit on or about March 1, 2016 and did not advise the landlord until he had already vacated the rental unit. Prior to vacating the rental unit, the tenant put a stop payment on the remainder of his post-dated cheques held by the landlord for the remainder of the fixed term tenancy. The landlord

testified that the tenant did not pay rent in March 2016 and that she did not have anyone in the rental unit for the months of April, May and June 2016.

The landlord testified that, early on in this tenancy, the tenant began to claim electrical issues and the two parties had ongoing disputes after this issue was raised. She testified that a party she brought in found no electrical risk even though her tenant had claimed that the unit had failed an electrical inspection. She provided a copy of an electrical report dated February 19, 2016 that indicated there were no safety risks within the rental unit but one minor code violation that was addressed. She testified that she attempted to mediate and resolve this issue with the tenant so that the tenancy could continue to the end of the fixed term but she was unable to do so herself or through her counsel. She testified that she received notice from the tenant in March 1, 2016 that he had vacated the rental unit because of the safety risk of continuing to reside there.

On March 11, 2016, the landlord's counsel supplied a letter to the tenant that stated that; there was no risk within the unit; that the tenant had abandoned the rental unit; and that the tenant had illegally ended the fixed term tenancy. The landlord testified that she was diligent in attempting to re-rent the property and did so as of June 1, 2016.

The landlord submitted a letter from the trustee for bankruptcy acting on behalf of the tenant that indicated the letter had been received and acknowledging this hearing date. Neither the tenant nor a representative for the tenant attended this hearing in support of his own application or to respond to the landlord's application.

Ultimately, the landlord testified that she sought the following amount from the tenant,

Item	Amount
Replace Bar Stools	\$433.41
Unpaid Rent: March 1, 2016	1250.00
Rental Loss: March to June 2016 (2500.00 x 3 months)	7500.00
Less Security Deposit	-1250.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Sought by the LL	\$8033.41

Analysis

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to

deduct all or a portion of the rent.” In this case, the tenant had not established any right to withhold or deduct rent. The landlord has provided sufficient evidence to show that the tenant provided notification (informal notice) on March 1, 2016 that he had vacated the residence and that he had provided no prior notice that he intended to do so. Therefore, the landlord is entitled to recover \$1250.00 in March 2016 rent from the tenant as I find the landlord was provided insufficient notice to re-rent over the month of March.

This tenancy was a one year fixed term tenancy to end on November 1, 2016. However, the tenant chose to vacate the rental unit prior to the end of the fixed term. Residential Tenancy Policy Guideline No. 30 (and section 44 of the Act) provides direction on the definition and terms of a fixed term tenancy:

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date...

In this form of tenancy, a term is fixed for the assurance of both parties. With few exceptions, this tenancy will continue to the end of its term, allowing the tenants and landlords the security that comes with this fixed period of time. In this case, the tenant's actions in vacating the unit prior to the end of tenancy led to a lack of security in incoming rent for the landlord. Pursuant to the legislation (section 44 of the Act) and Policy Guideline No. 3, “[in] certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.” In the circumstances of this tenancy, the tenant breached the terms of the fixed term tenancy and I find the landlord lost rental income as a result.

As with any application for monetary compensation related to financial loss, when one party seeks compensation for a loss, they are required to mitigate that loss. As per Policy Guideline No. 3,

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

I find that the landlord made efforts to mitigate her loss. Based on her testimony and the submissions of her counsel, the landlord re-rented the property as of June 1, 2016. She

re-rented the property for a higher monthly rental amount than the tenant had paid. Therefore, I find that the landlord did not suffer any rental loss after June 1, 2016. The landlord is entitled to recover from the tenant her rental loss for the months of April, and May 2016 for a total of \$7500.00.

I find that the landlord is entitled to recover rental arrears, 3 months' rental loss and pursuant to section 72, the landlord is entitled to retain the tenants' security deposit towards this monetary amount. I find that the landlord is entitled to recover the \$100.00 filing fee for this application as she has been successful in her dispute resolution application.

The landlord is entitled to a monetary order as follows,

Item	Amount
Replace Bar Stools	\$433.41
Unpaid Rent: March 1, 2016	1250.00
Rental Loss: March to June 2016 (2500.00 x 3 months)	7500.00
Less Security Deposit	-1250.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$8033.41

Conclusion

I dismiss the tenant's application in its entirety without liberty to reapply.

I grant a monetary order to the landlord in the amount of \$8033.41.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders 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: August 9, 2016

Residential Tenancy Branch

