



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNR MNSD OPN FF

Introduction

This hearing convened on July 6, 2016 for 67 minutes and was adjourned to written submissions. Each party was issued oral orders regarding the submission of additional evidence. An Interim Decision was issued July 7, 2016 confirming the aforementioned oral orders issued during the July 6, 2016 hearing. As such, this Decision must be read in conjunction with my July 7, 2016 Interim Decision.

The application for Dispute Resolution listed one corporate landlord as the Applicant; however, two agents for the corporate landlord appeared at the hearing and each agent (Landlord) presented evidence. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

On July 6, 2016 the Tenant was ordered to submit additional evidence as recorded in the Interim Decision as follows:

*The Tenant is ordered to submit to the Residential Tenancy Branch (RTB) or Service BC Office and to the Landlord, copies of relevant emails where the Tenant informed the Landlord(s) of her concerns with the illegal events occurring in other rental units located on the same floor as her rental unit. These emails may be accompanied by a one page written summary from the Tenant. The aforementioned **must** be received at the RTB or Service BC office no later than **July 31, 2016**. No extensions will be granted.*

[Reproduced as written p 4 p. 1 of Interim Decision]

On Wednesday August 3, 2016 nine pages of documentary evidence was received from the Tenant at the RTB. This evidence was received after the ordered timeframe.

Section 25(3) of the Interpretation Act provides that if the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 62(3) of the *Act* stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.

The Residential Tenancy Branch (RTB) was not open on Saturday July 30, 2016 or Sunday July 31, 2016. Monday August 1, 2016 was a Civic holiday during which the RTB was closed. Therefore, pursuant to section 25(3) of the *Interpretation Act*, and section 62(2) of the *Residential Tenancy Act* (the *Act*), I conclude the latest date on which the Tenant was able to submit her additional evidence in order to be in compliance with my July 6, 2016 Order was Tuesday August 2, 2016.

As explained to the Tenant during the July 6, 2016 hearing, and as confirmed in my July 7, 2016 Interim Decision, no extensions would be granted regarding the date upon which the Tenant's submissions were ordered to be received at the RTB.

Based on the above, I find pursuant to section 62 of the *Act*, the Tenant failed to comply with my Order to submit her additional submissions no later than July 31, 2016 (August 2, 2016 as per the *Interpretation Act*). Accordingly, I declined to consider the Tenant's additional evidence.

On July 6, 2016 the Landlords were ordered to submit additional evidence as recorded in the Interim Decision as follows:

*The Landlord may submit a written response to the aforementioned documents that will be served upon them by the Tenant. The Landlords must ensure their response, which may include a written statement and/or copies of their original email responses that had been sent to Tenant, to the Residential Tenancy Branch (RTB) or Service BC and to the Tenant **no later than August 15, 2016.***

On August 12, 2016 the Landlord's 13 page evidence submission was received at the RTB. Based on the aforementioned, the Landlord's submission was received at the RTB within the ordered timeframe and will be considered as evidence for this proceeding.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation?

Background and Evidence

The Tenant entered into a written fixed term tenancy agreement which began on July 1, 2015 and was set to expire on June 30, 2016. Although the tenancy became effective

on July 1, 2016, the Tenant chose to delay her occupation date until sometime in August 2015. Rent of \$1,695.00 was payable on the first of each month. In April 2015 the Tenant paid \$847.50 as the security deposit.

On June 30, 2016 the Tenant gave the Landlord notice that she would ending her fixed term tenancy early; effective on February 29, 2016. The Tenant signed the Landlord's "Breaking Lease Form" crossing out the section regarding cancellation charges and payment for rent for the remainder of the lease.

Both parties were in attendance at the move in and move out condition inspection. The move in condition inspection report form was completed and signed on July 1, 2015. The move out condition inspection report form was completed and signed on February 29, 2016. The Tenant provided her forwarding address to the Landlord on the move out condition inspection report form on February 29, 2016.

The Landlord filed their application seeking \$7,080.00 which was initially comprised of \$6,780.00 loss of rent for March, April, May, and June 2016 (4 x \$1,695.00) plus \$300.00 for liquidated damages as provided for in section 2.10(b)(ii) of the tenancy agreement.

The Landlords testified they were able to re-rent the rental unit effective May 1, 2016 so they were reducing their claim to \$3,690.00 comprised of \$3,390.00 loss of rent for March 2016 and April 2016 plus \$300.00 for liquidated damages.

The Tenant testified that she felt she had no choice but to end her tenancy early because the building was not secure or safe for herself and her two children. She asserted that she complained to the Landlord, verbally and by email, about a neighbour who was allegedly selling drugs and another who was involved in domestic disputes. The Tenant argued that the Landlord did not respond to any of her emails.

The Tenant argued that the Landlord failed to remedy the situation and failed to make the building safe for her family to continue to reside inside there. The Tenant stated the police had attended both of her neighbour's rental units and that the police had told her that the one neighbour was a known drug dealer. The Tenant stated the police attended one day and broke down that neighbour's door.

The Tenant confirmed she did not file an application for Dispute Resolution to try and resolve the issues in the building. Rather, she simply chose to end her tenancy early. An action which the Tenant asserted was required for the safety of her family.

The Landlords confirmed there had been police presence at the neighbouring rental units and in once instance the police broke down the door. The Landlords argued that they had taken proper action to evict both of those neighbours and had informed the Tenant of their actions. The Landlords submitted documentary evidence which confirmed those evictions. In addition, the Landlords submitted copies of their responding emails to the Tenant informing her of the actions they had been taking.

The tenancy agreement submitted into evidence included, in part, the following:

2.10 ENDING THE TENANCY

(b) If Tenant unilaterally elects to vacate the Premises before the expiration of the term described in section 1.01 of this Agreement and Landlord does not elect to treat this Agreement as being at an end, Tenant acknowledged and agrees that s/he shall continue to be responsible for the payment of the rent payable under this Agreement until the earlier of:

(i) the expiration of the term as described in section 1.01 of this Agreement; or

(ii) the re-letting of the Premises by Landlord;

At which time the tenancy shall be at an end. Should the Premises be immediately re-let, so that no rental income is lost, liquidated damages of \$300.00 shall be charged to cover administration costs of re-letting the Premises. Landlord and Tenant acknowledge and agree that the payment of the said damages shall not preclude Landlord from exercising any further right of pursuing another remedy available in law or in equity, including, but not limited to, damages to the Premises and damages as a result of loss of rental income due to Tenant's breach of the terms of this Agreement.

[Reproduced as written]

Both the Landlord and Tenant initialed the tenancy agreement beside the above listed clause.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 45 (2) of the Act stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

The irrefutable evidence was the Tenant gave notice to end her fixed term tenancy agreement prior to the end of the fixed term, in breach of section 45(2) of the Act. I do not accept the Tenant's submissions that she had no other choice but to break her lease.

In addition, I find there was insufficient evidence to prove the Landlords failed to provide a safe building, or failed to comply with the Act. Rather, the evidence supports the Landlords complied with the Act by issuing notices to end tenancy to the two neighbours who had been causing the Tenant concern.

Furthermore, I find the Landlords took actions to minimize their losses by attempting to re-rent the Tenant's rental unit for as soon as possible, as required by section 7(2) of the Act. That being said, the Landlords still suffered a loss of rent for March 2016 and April 2016 due to the Tenant's breach of the Act, in the amount of \$3,390.00. Accordingly, I grant the Landlord's application for loss of rent in the amount of **\$3,390.00**, pursuant to section 67 of the Act.

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.

Based on the irrefutable evidence, I accept the undisputed submissions that the Tenant gave notice to end the tenancy early, prior to the end of the fixed term and in breach of the tenancy agreement and the Act. I further accept the Tenant had full knowledge of the liquidated damages clause as she initialed the tenancy agreement agreeing to that clause. Accordingly, I find the Landlords provided sufficient evidence to prove their claim for liquidated damages and I grant them monetary compensation in the amount of **\$300.00**, pursuant to section 67 of the Act.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

Monetary Order –This claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit plus interest as follows:

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$847.50 deposit since April 2015.

Loss of March and April 2016 rent	\$3,390.00
Liquidated Damages	300.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$3,790.00
LESS: Security Deposit \$847.50 + Interest 0.00	<u>-847.50</u>
Offset amount due to the Landlord	<u>\$2,942.50</u>

The Tenant is hereby ordered to pay the Landlord the offset amount of \$2,942.50 forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$2,942.50** which may be enforced through Small Claims Court after service upon the Tenant.

Conclusion

The Landlord was successful with their application and was granted a monetary award of \$3,790.00. That award was offset against the Tenant's security deposit leaving a balance owed to the Landlord of \$2,942.50

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: September 02, 2016

Residential Tenancy Branch