



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1 OAK PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

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

- a monetary order for unpaid rent and 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 recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that he received all of the landlords' documentary evidence. The tenant did not submit any documentation for this hearing.

Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent and loss arising out of this tenancy?

Background, Evidence

The landlord's testimony is as follows. The landlord testified that on April 7, 2016 the tenants signed an 18 month fixed term tenancy agreement that was to begin on May 1, 2016. The rent was to be \$1600.00 per month. The parties agreed that the tenants could post the security deposit of \$800.00 on April 19th when MB got paid. The landlord testified that the following day, she received a text message from SB that her husband had changed his mind about the suite and thought the price was too high and no longer wanted to move in. The landlord testified that she made attempts to try to resolve the matter with the tenants but MB was not even willing to speak with her or her partners.

The landlord testified that she posted ads on Facebook and Kijiji to try to rent the unit. The landlord testified that she posted ads in the local newspaper on May 19, 2016 in attempts to mitigate the loss. The landlord testified that she finally rented the unit for August 1, 2016. The landlord is seeking loss of rent for three months, the advertising costs and utilities costs along with the filing fee. The landlord testified that this matter could have been avoided had the tenant

spoken to them as she would have made every attempt to accommodate or minimize the impact on the tenants. The landlord testified that MB was non-communicative which exacerbated the situation.

The landlord is applying for the following:

1.	Loss of Rent May – July	\$4800.00
2.	Advertising	\$155.82
3.	Utilities	\$85.41
4.	Filing fee	100.00
	Total	\$5141.23

The tenant gave the following testimony. The tenant stated that his wife was pregnant at the time and that shortly after he signed the lease agreement his mother had a stroke. The tenant testified that it was an extremely stressful time and that his wife notified the landlord the following day that they could not move in as planned. The tenant testified that he did not need to specify any further as the matter was private and that he had justification to cancel the agreement. The tenant testified that the landlord pressured him to sign the agreement in order for him to secure the suite. The tenant testified that the landlord did not advise him of what could happen if he had to cancel the agreement.

The tenant testified that he feels that he should not have to pay anything.

Analysis

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 arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I address the landlords claim and my findings as follows.

Loss of Rent - \$4800.00.

The tenant acknowledges that he signed an 18 month fixed term agreement. The tenant further acknowledges that he advised the landlord on April 8, 2016 that he would not be moving in for May 1, 2016.

I find that the landlord and tenant entered into a fixed term tenancy for the period from May 1, 2016 to November 30, 2017.

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 the tenant cannot give notice to end the tenancy before the end of the fixed term. If the tenant does, they could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenant broke the agreement before the completion of the fixed term on November 30, 2017. 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*, the *Regulation* or the 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 a 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 soon after receiving notice of the tenant's intention to not occupy the rental unit. The landlord posted an online rental advertisement the following day on two websites. The landlord made efforts to re-post and renew the advertisements to preserve priority on the website. I accept the landlord's evidence that this was a slow rental period, to an extent. The landlord did not immediately lower the rent or offer more flexible terms such as a shorter lease or month to month tenancy until June. As such, I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses but is only entitled to the loss of revenue for the months of May and June; I find that to be a reasonable amount of time to

rent the unit. Accordingly, I find that the landlord is entitled to \$3200.00 for a loss of May and June rent from the tenant.

Advertising \$155.82

The landlord provided a receipt to support the advertisement for the months of May and June. The landlord has provided sufficient evidence to support this claim and is entitled to \$155.82.

Utilities - \$85.41

The tenant never occupied that unit and cannot be held responsible for costs that he did not cause. The landlord has a duty to maintain their property and accordingly I dismiss this portion of their application.

The landlord is entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

The landlord has established a claim for \$3455.82. I grant the landlord an order under section 67 for the balance due of \$3455.82. This order may be filed in the Small Claims 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: October 19, 2016

Residential Tenancy Branch