



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ONE WEST PROPERITES CORP
and [tenant name suppressed to protect privacy]

Dispute Codes MNR MNSD 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*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' 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 tenants pursuant to section 72.

The landlord's agent, AD, testified on behalf of the landlord in this hearing and was given full authority to do so by the landlord. Both parties 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 tenants confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") as well as the evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with copies of the landlord's Application and written evidence. The landlord confirmed receipt of the tenants' evidence package, and accordingly I find the landlord duly served with a copy of the tenants' evidence in accordance with section 88 of the *Act*.

Issues to be Decided

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

Is the landlord entitled to retain all or a portion of 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

The landlord's agent testified regarding the following facts. This 1 year and 15 day fixed term tenancy began on June 15, 2016 with monthly rent currently set at \$1,500.00, which is payable on the first day of each month. The landlord currently holds a security deposit in the amount of \$750.00. A copy of the tenancy agreement was included in the evidence, which contained the following terms: "EARLY TERMINATION OF FIXED TERM TENANCY—The tenant understands and agrees that should the tenant want to move before the end of a fixed term tenancy, the tenant will have to continue to pay rent until the end of the term unless the landlord agrees in writing that the tenant can end the tenancy early or can assign or sublet the unit, or if the landlord is able to mitigate the potential loss by renting out the premises. The tenant will be responsible for all costs incurred by the landlord to mitigate potential loss. This is not a penalty". The tenants do not dispute the fact that this is a fixed term tenancy which does not end until June 30, 2017.

The landlord's agent testified that on July 14, 2016 he received an email from the tenants with regards to issues with the water in their suite. The landlord contacted a handyman as well as the concierge in the building to see if other residents had the same issue. The landlord testified that he had not received any other emails until October 2016 when the tenants sent an email inquiring about subletting the unit as one of the tenants was leaving the country for work. On November 10, 2016 the owner had agreed to allow the tenants to sublet the suite. The tenants did not end up subletting the suite, citing the water issue as the reason.

The tenants testified that they had documented all the water issues, and made phone calls to the landlord. They expressed concern during the hearing that these water issues may have been pre-existing, before this tenancy had even started. The tenants testified that the issue resulted in scalding hot water, and they had to resort to showering in the pool area. They had inquired about subletting the unit, as they did not want to just end the lease agreement, but they felt they could not properly sublet without functioning water in the rental suite.

The landlord's agent replied that November 10, 2016 was the first written response he had received from the tenants in regards to the water issues. The tenants did submit, in their evidence package, several pages of correspondence between themselves and the property manager, MA. These letters dated back to as early as August 2016, containing communication about the water issue in the tenant's suite. On November 10, 2016 an email was sent from one of the tenants to the landlord's agent that they could not sublet with the risk of the water not being fixed long term.

On November 23, 2016 the landlord received notice from the tenants that they would like to terminate the tenancy. On November 30, 2016 the tenants moved out of the suite, which was the same date the water issue was resolved.

The landlord was able to find a new tenant for the same monthly rent of \$1,500.00 for mid December, 2016. The agent testified that there was nothing they could do about the water issue as it was a building issue, and not something they could do on their end.

The landlord is seeking a monetary order of \$1,600.00 to cover their losses for the unpaid rent, the cost of re-renting the unit, as well as recover the cost of their filing fee. The landlord is seeking to retain the tenants' security deposit in partial satisfaction of the monetary order requested per the monetary worksheet submitted.

The tenants expressed frustration during the hearing that they could not live under these conditions, and had no choice but to move out. They felt that the landlord could have also done more to mitigate the issue by expediting the process to find a new tenant. They dispute the landlord's application stating that they were justified in ending this tenancy early, and should not be responsible for any monetary losses.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) *the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *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.

While the tenants did give a reason for wanting an early termination of this tenancy, they did not end it in a manner that complies with the *Act*, as stated above. The tenants did not give the landlord at least one month's notice, and the date was seven months earlier than the date specified in the tenancy agreement. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to this tenancy.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*.

I find further that the evidence shows that as a result of the tenants' actions, the landlord suffered a rental loss. The evidence of the landlord is that he was able to re-rent the premises at the same monthly rent, midway through December 2016. Based on the landlord's efforts I am satisfied that he sufficiently mitigated his damages. I will therefore allow the landlord's claim for a monetary order for rental differential loss in the sum of \$750.00 for the first two weeks of December 2016.

The landlord requested, in their monetary, order to recover the cost of their "leasing fee" in the amount of \$750.00. As the landlord would normally incur this cost as part of their business I am not allowing this part of their application.

The landlord continues to hold the tenants' security deposit of \$750.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit of \$750.00 plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

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

Conclusion

I am allowing the landlord's application for a monetary award in the amount of \$750.00. To implement this monetary award, I order the landlord to retain \$750.00 from the tenants' security deposit.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee. I issue a Monetary Order in favour of the landlord for the purposes of recovering this filing fee. 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: January 24, 2017

Residential Tenancy Branch