



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "*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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant DB and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The individual named as tenant PB in the landlord's application also attended the hearing. Tenant PB testified that he is not a party to this dispute. He testified that he did not reside in the rental unit nor sign the tenancy agreement. He is the father of the tenant and simply assisted the tenant in securing the tenancy. Based on "tenant PB's" undisputed testimony, I amend the landlord's application to remove "tenant PB" as party to this dispute and allow him to act as advocate of the tenant.

The landlord testified that on October 4, 2016 he forwarded the landlord's application for dispute resolution via registered mail to the address provided by the tenant on the application for tenancy. The tenant's advocate testified the address listed on the application is his address; consequently he received the application and forwarded a copy to the tenant. The tenant acknowledged receipt of the landlord's application. I find pursuant to section 71 (2)(b) of the *Act*, that the landlord's application was sufficiently served.

Each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the evidence, I find that the landlord was duly served with the tenant's evidence in accordance with sections 88 and 89 of the *Act* and pursuant to section 71(2)(b) of the *Act*, the tenant was sufficiently served with the landlord's evidence.

Issue(s) to be Decided

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

Is the landlord authorized to recover the filing fee for this application from the tenant?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on August 1, 2016 on a fixed term until July 31, 2017. Rent in the amount of \$3,000.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$1,500.0 at the start of the tenancy.

In a September 14, 2016 text, the tenant advised the landlord that, she was vacating the rental unit on September 16, 2016, and before the July 31, 2017 expiry of the fixed term tenancy. The tenant vacated the rental unit September 16, 2016.

The landlord is seeking compensation in the amount of \$25,000.00, including the following;

Item	Amount
October 2016 Rent	\$3,000.00
November 2016 Rent	\$3,000.00
December 2016 Rent	\$3,000.00
January 2017 Rent	\$3,000.00
February 2017 Rent	\$3,000.00
March 2017 Rent	\$3,000.00
April 2017 Rent	\$3,000.00
May 2017 Rent	\$3,000.00
June 2017 Rent	\$1,000.00
July 2017 Rent	\$0
Total Monetary Claim	\$25,000.00

The landlord contends that the tenant ended the tenancy contrary to the fixed term and despite his attempts he has been unsuccessful in re-renting the fully furnished unit. He testified that he has received dozens of applications but for one reason or another they have not passed his screening criteria. The landlord testified that sometime around November he reduced the rent by \$50.00. In an effort to support his claim the landlord

has provided copies of various online advertisements, emails from potential tenants, photographs, emails to and from the tenant, the tenant's application, text messages and tenancy agreement.

In response, the tenant's advocate stated that the tenant was accosted twice outside the rental unit and out of fear for her safety she sought to end the tenancy. The tenant understood that the landlord was agreeable to ending the tenancy based on the landlord's response to the September 14, 2016 text, in which he replied "we'll have to set up a time to do the end of tenancy condition inspection." The tenant's advocate explained that because the tenancy was ending early, the parties verbally agreed the landlord would retain the \$1,500.00 security deposit and September rent. The tenant provided copies of text correspondence between the landlord and tenant's advocate.

Analysis

Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on July 31, 2017. Although the tenant provided written notice of her intent to end the tenancy on September 16, 2016, she attempted to end the tenancy earlier than the date specified in the fixed term tenancy agreement, which is not in compliance with section 45 of the *Act*.

Pursuant to the *Residential Tenancy Policy Guideline # 30*: neither a landlord nor a tenant can end a fixed term tenancy unless for cause or by written agreement of both parties. A tenant ending a fixed term tenancy for cause bears the burden to prove a material term of the tenancy agreement has been breached. I find the tenant provided insufficient evidence to establish a breach of a material term of the tenancy agreement. Further I find that the parties in this case did not mutually agree to end the fixed term tenancy. I find the landlord's text in response to the tenant's text that she was vacating was in relation to a condition inspection report and does not constitute written agreement to mutually end the tenancy. Based on the above I find the tenant did not end this tenancy in accordance with the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. I find that the tenant was in breach of her fixed term tenancy agreement because she vacated the rental premises prior to the July 31, 2017 date specified in that agreement. As such, the landlord is entitled to compensation for losses the landlord incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*. 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.

Pursuant to the *Residential Tenancy Policy Guideline # 5*: when a tenant ends the tenancy agreement contrary to the provisions of the *Act*, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Based on the documentary evidence and landlord's testimony I am satisfied the landlord promptly advertised the unit in an effort to re-rent. Despite the landlord's prompt advertising, I find it probable the landlord could not secure a new tenancy effective October 1, 2016 and therefore award him \$3,000.00 for loss of October rent.

In relation to the landlord's remaining monetary claim for November 2016 to March 2017 loss of rent, I find the landlord's effort to re-rent the unit have been unreasonable. I first find that the landlord's decision to reduce the requested monthly rent from \$3,000.00 to \$2,950.00 does not represent a genuine attempt to mitigate the tenant's exposure to his losses as is required by section 7(2) of the *Act*. Based on the landlord's admission that he had dozens of applications, the documentary evidence that shows at least ten inquiries on the unit and the current housing crisis, I find it probable the landlord had opportunities to re-rent the unit yet failed to do so. The landlord has provided insufficient evidence to substantiate his position that all applications received to date failed his screening criteria. For these reasons, I dismiss the landlord's monetary claim for loss of rent from November 2016 to March 2017 in the total amount of \$15,000.00 without leave to reapply.

I find that the landlord's claim for April to June loss of rent is premature. Although the landlord had anticipated this rent with the fixed term tenancy, he now has a duty to mitigate this loss with reasonable efforts of re-renting. The landlord's remaining monetary claim for April to June loss of rent in the amount of \$7,000.00 is dismissed with leave to reapply.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$3,100.00.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$1,500.00 in partial satisfaction of the monetary award and I grant an order for the balance due \$1,600.00.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,600.00 for the following items:

Item	Amount
October 2016 Rent	\$3,000.00
Filing Fee	\$100.00
Less Security Deposit	(\$1,500.00)
Total Monetary Order	\$1,600.00

The landlord is provided with this order in the above terms and 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 orders of that Court.

I dismiss the landlord's application for a monetary order for loss of rent from April 2017 to June 2017, with leave to reapply.

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: April 10, 2017

Residential Tenancy Branch