



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREENBRIER HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

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

The hearing was conducted via teleconference and was attended by the landlord. No one was in attendance on behalf of the tenant. The landlord submitted documentary evidence that the tenant was served notice of this application and this hearing by registered mail on November 25, 2016. Canada Post tracking information was submitted in the landlord's evidence that showed the items was signed for and accepted on November 28, 2016. Based on the submissions of the landlord, I find the tenant was served notice of this proceeding on November 28, 2016 in accordance with the *Act*, therefore, I continued in the absence of the tenant.

Issue to be Decided

Is the landlord entitled to a monetary award for loss arising out of this tenancy?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Background, Evidence

The landlord's undisputed testimony is as follows. The tenancy began on May 1, 2016 and was to be for a fixed term that would end on April 30, 2017. However, the tenants physically moved out of the unit on June 29, 2016 but paid the rent until the end of July 2016. The tenants were obligated to pay \$2900.00 in rent on the first of each month. CV

testified that the tenant's paid the liquidated damages charge of \$500.00. EE testified that they do not hold any deposits. EE testified that she began advertising the unit immediately after the tenants gave notice. EE testified that the unit was advertised on the company website in addition to four other free websites. EE testified that a rental agent was also hired to help rent the unit. CV testified that the despite lowering the asking price several times they were unable to rent the unit until October 17, 2016.

The landlord is applying for the following:

1.	Loss of Rent August	2900.00
2.	Loss of Rent September	2900.00
3.	Loss of Rent October 1-13	1216.00
4.		
5.		
6.	Filing fee	\$100.00
	Total	\$7116.00

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the landlords, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings around each are set out below.

Loss of Rent

I find that the landlord and tenant entered into a fixed term tenancy for the period from May 1, 2016 to April 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 vacated the rental unit on June 29, 2016 but did pay until July 31, 2016, before the completion of the fixed term on April 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 written notice of the tenant's intention to vacate the rental unit. The landlord posted an online rental advertisement immediately after being advised by the tenant that they would be moving out. 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, as the luxury market had slowed down considerably compared to earlier in the year. In addition, the landlord reduced the price several times in attempts to attract more activity. As such, I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses.

The landlord seeks two months and thirteen days of rental loss for August 1- October 13, 2016 the period during which the property could not be re-rented due to the tenant's breach. The liquidated damages clause of the tenancy agreement addendum states that the landlord is not precluded from claiming a loss of rental income if liquidated damages are paid by the tenant. Accordingly, I find that the landlord is entitled to \$7016.00 for a loss of August 1 – October 13, 2016 rent from the tenant.

Conclusion

The landlord has established a claim for \$7016.00. The landlord is also entitled to the recovery of the \$100.00 filing fee. I grant the landlord an order under section 67 for the balance due of \$7116.00. 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: May 25, 2017

Residential Tenancy Branch