



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UNIQUE REAL ESTATE ACCOMMODATIONS INC
and [tenant name suppressed to protect privacy]

DECISION

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, damage to the rental unit, 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent, AO (the "landlord"). The tenant SS (the "tenant") primarily gave evidence on behalf of both co-tenants.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's application for dispute resolution or evidentiary materials. The tenants confirmed receipt of the landlord's materials. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with the landlord's application and evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage and loss as claimed?
Is the landlord entitled to retain all or a portion of the security deposit for this tenancy?
Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The parties agreed on the following facts. The tenants originally moved into the rental unit in March, 2015 for a fixed term of one year with a monthly rent of \$2,600.00. A subsequent fixed term tenancy was entered by the parties on April 1, 2016, which was scheduled to end March 31, 2017. The monthly rent for this tenancy was \$2,675.00 payable on the first. A security deposit of \$1,300.00 was paid by the tenants at the start of the 2015 tenancy, was carried over to the subsequent tenancy, and is still held by the landlord. A condition inspection report was prepared by the parties at the start of the tenancy in 2015.

The owner of the rental unit resides outside of the country and the landlord manages the property in their stead. The tenants were advised by the landlord that the property owner intended to perform renovations to the rental unit beginning in April, 2017. The full scope of the renovations was not decided but it was believed it would include changing flooring, window coverings, kitchen counters and other work. The landlord intended the monthly rent to be raised to \$3,800.00 after the renovations were completed. It was unknown if the rental unit would be habitable during the renovations but if it were the landlord intended to compensate the occupants one month's free rent as compensation for the inconvenience. The tenants declined the offer to renew the fixed term tenancy for under these terms.

The tenants gave notice to the landlord on December 30, 2016, of their intention to end the fixed term tenancy effective January 31, 2017. The landlord and the tenant did not reach a mutual agreement to end the tenancy.

The tenants vacated the rental unit on January 30, 2017. The parties performed a move-out inspection. The landlord made a claim for the full rent amount for February and March, 2017 for a total of \$5,350.00. The tenant did not provide written authorization that the landlord could retain any amount of the security deposit.

The landlord testified that they took reasonable steps to attempt to mitigate their loss. The property owner was unable to attend the rental unit until April, 2017 and therefore the scope of the renovations could not be determined. The landlord said that the unit was advertised online and several showings were done. The landlord testified that they sought a new tenant who would occupy the rental unit for a fixed period of one year. The landlord said that it is difficult to find an occupant for an unfurnished suite which is scheduled for renovations of an unknown scope. The landlord testified that a new occupant could not be found. In April, 2017 the property owner attended the rental unit

and decided on the scope of renovations. No further attempts were made to find an occupant for the rental unit.

The landlord testified that they have forgiven the \$400.00 liquidated damage that is payable by the tenants under the tenancy agreement and are only seeking the equivalent of the \$2,675.00 rent for the months of February and March, 2017 for the total amount of \$5,350.00.

The tenant testified that they only saw a posting on the corporate landlord's website and not on general sites such as Craigslist or Kijiji. The tenant said that they are only aware of one showing which occurred while they still occupied the rental unit. The tenant testified that the rental vacancy rate in the municipality is less than 1% and believe that a new occupant could easily have been found.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. Pursuant to section 7(2) of the *Act* the claimant must take reasonable steps to attempt to minimize the tenant's exposure to the landlord's damage or losses.

Residential Tenancy Policy Guideline 5 states that while it is not necessary that the party making a claim do everything possible to minimize the loss, some reasonable efforts must be taken. The Guideline further provides that, "Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable."

I accept the landlord's evidence that the tenant's breach of the fixed term tenancy agreement caused some loss. However, I find that there is insufficient evidence that the landlord took reasonable steps in order to mitigate their rental income loss. The landlord did not submit into written evidence copies of the online posting or details on the number of showings that were conducted. The landlord testified that it is difficult to find a renter for an unfurnished suite that may be undergoing renovations in the near future, but I do not find it reasonable that a new occupant could not be found at all. The tenant provided undisputed testimony that the rental vacancy rate in the municipality is

less than 1%. Even if the scope of renovations scheduled to begin after April, 2017 was not known, I find the landlord could have taken additional steps to find a new occupant for the rental unit. The landlord testified that they were seeking a tenant not just for the period of February and March but for a fixed term of one year during which time it was expected that renovations would occur. The landlord has not provided sufficient evidence to show that the steps taken to find a new occupant were reasonable under the circumstances. Under these circumstances, as there is insufficient evidence to show that the landlords have taken reasonable steps to mitigate their loss of rental income I find that a monetary award of \$1,300.00, the amount of the security deposit paid for this tenancy, approximately the amount of half a month's current rent, is appropriate.

As the landlord's application was only partially successful, I decline to issue an order that the landlord may recover the filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$1,300.00 security deposit in satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period.

Conclusion

The landlord is authorized to retain the \$1,300.00 security deposit for this tenancy in satisfaction of the monetary award issued.

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: June 16, 2017

Residential Tenancy Branch