



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH POOL XIV C/O METCAP LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF MNDC MNR MNSD

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*,
and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant and landlord attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The landlord was represented at the hearing by Property Manager, S.P. (the "landlord").

The tenant acknowledged that he received a copy of the landlord's Application for Dispute Resolution sent by Canada Post Registered Mail on January 19, 2017. Pursuant to section 89 the *Act*, the tenant is found to have been served with these documents.

At the outset of the hearing I asked the landlord if any evidence had been submitted to the hearing on the landlord's behalf. The landlord explained that on January 19, 2017 a package of evidence had been sent by regular mail to the *Residential Tenancy Branch*. There is no record of this evidence being received and I therefore did not have any physical evidence before me at the hearing.

Issue(s) to be Decided

Is the landlord entitled to retain the Security Deposit?

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

Can the landlord recover the filing fee from the tenant?

Background and Evidence

Undisputed testimony provided by the landlord explained that this was a fixed-term tenancy that was set to run from August 1, 2016 to July 31, 2017. Rent was \$1,490.00 per month and a security deposit of \$745.00 continues to be held by the landlord.

The landlord explained that she was seeking a Monetary Order of \$2,235.00 in satisfaction for the tenant having broken their fixed term tenancy agreement. Both parties confirmed that the tenant gave notice on November 25, 2016 of his intention to vacate the rental unit at the end of December 2016. The landlord stated that due to this late notice, she was unable to rent the apartment until February 1, 2017. The landlord said that the Monetary Order she sought was in reflection of \$1,490.00 in rent for January 2017, along with liquidated damages of \$745.00 as per section 5 of the tenancy agreement entered into between the parties.

The tenant agreed with the timelines provided to the hearing; however, he disputed that any money was owed as a result of the tenancy. The tenant questioned the efforts that the landlord took in finding a new tenant for the rental unit.

During the course of the hearing the landlord explained that as soon as the tenant gave notice of his intention to vacate the rental unit on November 25, 2016 the rental unit was placed on five separate websites. She testified that the unit was not shown in December 2016 but was shown 8 times in January 2017. The tenant did not disagree with the landlord's testimony; however, he argued that these efforts on the part of the landlord were general and no specific efforts were made on the part of the landlord to rent out his precise unit. The tenant explained that the websites on which the apartment was listed did not display an individual listing for his apartment but contained a general listing for the building. Furthermore, he contended that multiple units in the building were available for rent and that the landlord had discretion on which units to fill.

Analysis

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for

damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect." In this case, written notice was provided to the landlord on November 25, 2016. The landlord testified that upon receipt of this notice she immediately posted "at least five" online advertisements listing the apartment for rent for January 1, 2017. I find that the landlord has made *reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect*.

While I appreciate the tenant's argument that no specific action was made by the landlord to re-rent his exact unit, the standard required of the landlord is only a *reasonable effort*. I find that the landlord taking immediate steps to place online advertisements upon receipt of the tenant's notice to be reasonable. Ultimately, the landlord should not be forced to suffer a loss as a result of a tenant breaking a contract. The landlord is therefore entitled to a monetary award in reflection of January 2017 rent.

The landlord has also applied for liquidated damages in the amount of \$745.00. During the course of the hearing, the landlord provided undisputed testimony that section 5 of the residential tenancy agreement signed between the parties contained a clause which penalized a tenant \$745.00 for liquidated damages. The landlord stated that due to the unexpected nature of the move, effort had to be made to ensure the unit was re-rented as soon as possible. Despite no copy of the tenancy agreement being submitted to the hearing, the tenant did not dispute that this clause existed. I find that the tenant has violated his tenancy agreement and the landlord was forced to take steps to mitigate future loss. These steps involved making efforts that were unexpected and required unanticipated work from the landlord's staff. Section 67 of the *Act* states, if damage or loss results from a party not complying with this Act, the regulations or a *tenancy agreement*, the director may determine the amount of, and order that party to pay, compensation to the other party. I find that a violation of the tenancy agreement occurred by the tenant, that the landlord had to make efforts to rectify this violation and that landlord is entitled to compensation as per section 5 of the tenancy agreement signed by the parties.

As the landlord was successful in her application, she may under section 72 of the *Act* retain the security deposit against her monetary award. In addition she can recover the \$100.00 filing fee associated with this application.

Conclusion

I issue a Monetary Order of \$1,590.00 in favour of the landlord as follows:

Item	Amount
Unpaid Rent for January 2017	\$1,490.00
Liquidated Damages	745.00
Recovery of Filing Fee	100.00
Less Return of Security Deposit	(-745.00)
Total =	\$1,590.00

The landlord is provided with a Monetary 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 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: June 30, 2017

Residential Tenancy Branch