



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on February 1, 2017 for a Monetary Order for: unpaid rent; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep the Tenants' security deposit; and, to recover the filing fee from the Tenants.

An agent for the Landlord (the "Landlord") appeared for the hearing and provided affirmed testimony as well as evidence in advance of the hearing. There was no appearance for the Tenants during the 25 minute hearing or any submission of evidence prior to the hearing. As a result, I turned my mind to the service of the documents by the Landlord for this hearing.

The Landlord testified that she served each Tenant with a copy of the Application and the Hearing Package to the Tenants' addresses. These addresses were listed on the Tenants' application for tenancy prior to them signing a tenancy agreement for the rent until which they never moved into. The Landlord sent the documents by registered mail on February 2, 2017 and provided all three Canada Post tracking numbers into evidence to verify this method of service.

The Canada Post website shows that Tenants BF and MF, the full names of whom appear on the front page of this Decision, received and signed for the documents on February 3, 2017. The Canada Post website shows that JV did not claim the documents and as a result, they were returned to the sender.

With respect to the service of documents for this hearing to BF and MF, I accept that these Tenants were served pursuant to Section 89(1) (c) of the Act. With respect to the service of documents on JV, Section 90(a) of the Act provides that a document is

deemed to have been received five days after it is mailed. A party cannot avoid service by failure or neglect to pick up mail. Therefore, based on the undisputed evidence before me, I find that JV is deemed to have received the documents for this hearing on February 7, 2017.

Issue(s) to be Decided

- Did the Tenants break the fixed term tenancy?
- Is the Landlord entitled to unpaid rent and liquidated damages?
- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of her monetary claim?

Background and Evidence

The Landlord testified that on January 12, 2017, all three Tenants signed a tenancy agreement. The agreement was provided into evidence and shows a start date of the tenancy for the rental unit of February 1, 2017.

The term of the agreement was for a fixed term of one year after which it was intended that the tenancy was to continue on a month to month basis thereafter. The tenancy agreement stipulates that the rent was \$2,100.00 payable on the first day of each month.

The parties then met the next day, on January 13, 2017, at which points the Tenants paid \$1,050.00 as a security deposit for the tenancy which the Landlord still holds in trust.

The Landlord testified that she contacted the Tenants on January 30, 2017 to arrange to do a move-in condition inspection. However, MF informed the Landlord that they would not be moving into the rental unit as she had split up from BF and that she wanted her security deposit back. No forwarding address was provided by the Tenants to the Landlord.

The Landlord explained that the Tenants did not pay rent for the first month of the tenancy and in this time they had to look for a new renter to fulfil the fixed term tenancy which they were able to do for March 2017. As a result, the Landlord seeks to claim unpaid rent for February 2017 in the amount of \$2,100.00.

The Landlord then pointed me to clause 5 in the tenancy agreement titled liquidated damages. This states "*If the tenant breaches a material term of this agreement that*

causes the landlord to end the tenancy for the end of the fixed term or if the Tenant provides the Landlord with notice, whether written, oral, or by conduct of an intention to breach the agreement and ends the tenancy by vacating, and does vacate before the end of the fixed term the Tenant will pay to the Landlord the sum of \$1,025.00 in liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the Landlord from claiming future rental revenue losses which will remain unliquidated. “

The Landlord testified that they spent February 2017 looking for a new renter which they were able to find for March 2017. The Landlord stated that the liquidated damages clause in the tenancy agreement accounts for the costs associated with finding a new renter. As a result, the Landlord now claims the liquidated damages of \$1,025.00.

Analysis

I have carefully considered the undisputed affirmed testimony and the documentary evidence of the Landlord in this Decision on the balance of probabilities as follows.

In relation to the Landlord's claim for unpaid rent, a fixed term tenancy is designed to ensure that parties adhere to the agreed time period of occupancy. Section 45(2) (b) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is **not** earlier than the date specified in the tenancy agreement as the end of the fixed term. In addition, Sections 16 and 17 of the Act state the following:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

17 A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

[Reproduced as written]

Based on the foregoing, I find that the Landlord and Tenants entered into a fixed term tenancy agreement on January 12, 2017 for a tenancy to commence on February 1, 2017. Therefore, the rights and obligations of this tenancy applied and the Tenants were required to take occupancy of the rental unit and honor the tenancy. There is no

evidence before me that the Tenants had authority under the Act to break the fixed term tenancy.

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement irrespective of whether the landlord complies with the Act. Therefore, I find the Tenants breached the Act by not paying any rent for the rental unit and ending the tenancy contrary to the tenancy agreement and to the provisions of the Act. As a result, I award the Landlord **\$2,100.00** in unpaid rent for February 2017.

Policy Guideline 4 provides guidance and a definition of liquidated damages as:

“A clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into...”

[Reproduced as written]

In this case, I accept that the Tenants signed the tenancy agreement which contained a liquidated damages clause as detailed above. I find the amount of the liquidated damages the Landlord seeks is genuine and reasonable. Therefore, the Landlord is granted **\$1,025.00** in liquidated damages as required by the signed tenancy agreement.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenants the **\$100.00** filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is **\$3,225.00** (\$2,100.00 + \$1,025.00 + \$100.00).

As the Landlord already holds \$1,050.00 in the Tenants' security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining amount of **\$2,175.00** (\$3,225.00 - \$1,050.00).

This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenants fail to jointly or severally make payment. Copies of this order are attached to the Landlord's copy of this Decision. The Tenants may also be held liable for any enforcement costs incurred by the Landlord.

Conclusion

The Tenants breached the Act by ending the fixed term tenancy early. Therefore, the Landlord may keep the Tenants' security deposit and is granted a Monetary Order for \$2,175.00 for unpaid rent, liquidated damages, and the filing fee.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 14, 2017

Residential Tenancy Branch