



Dispute Resolution Services

Page: 1

Residential Tenancy Branch Office of Housing and Construction Standards

a A matter regarding BAYSIDE TOWERS APARTMENTS LTD.
and [tenant name suppressed to protect privacy]

JUDICIAL REVIEW RECONSIDERATION DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This matter dealt with a Judicial Review Reconsideration Decision date February 23, 2017. The decision of Supreme Court was to have the compensation for lost rental income for 6 days representing February 11, 2016 to February 15, 2016 and the filing fee of \$100.00 reconsidered by the Residential Tenancy Branch.

Issue(s) to be Decided

1. Is the Landlord entitled to 6 days of lost rental income.
2. Is the Landlord entitled to recover the filing fee of \$100.00 from the Tenant?

Background and Evidence

This tenancy started on February 8, 2015 as a fixed term tenancy with an expiry and move out date of January 31, 2016. The Tenant paid a security deposit of \$547.50 on February 8, 2015. The tenancy ended on February 11, 2016 by the Landlord hiring a bailiff to enforce an Order of Possession.

The Landlord submitted the tenancy agreement which states the tenancy was a fixed term tenancy ended on January 31, 2016 and the Tenant signed and agreed to a clause in the tenancy agreement that at the end of the tenancy January 31, 2016 the that Tenant had to move out of the unit on January 31, 2016. This did not happen and the Landlord successfully applied for an Order of Possession and then enforced it on February 11, 2016. The Landlord continued to say he did not show the rental unit to potential new tenants because he did not know when the bailiff would enforce the Order of Possession. Consequently the Landlord said he had wait unit February 11, 2016 for possession, he then had to clean the rental unit on February 11 and 12, 2016 and then he showed the unit to potential tenants on February 13, 2016. The Landlord said the rental unit was rented on February 17, 2016. The Landlord continued to say he was awarded 6 days of lost rental income for February 11 to February 16, 2016 which was part of the rent awarded to him in the decision of August 26, 2016. The decision of August 26, 2016 awarded the Landlord rent from February 1, 2016 to February 16, 2016. The Landlord continued to say he cleaned and rented the unit as quickly as he could to mitigate the costs.

Further the Landlord said the Tenant's reasons for the clarification decision of September 26, 2016 were that the Tenant did not prevent the Landlord from show the rental unit to potential tenants and that the Tenant asked for a 24 hour notice for the Landlord to enter the property to show the unit. The Landlord

said the Tenant did not prevent the Landlord from showing the property and these reasons for the review are both inconsequential as the Landlord could not show the unit to potential tenants as he did not know what day the unit would be available. The Landlord said because the Tenant did not move out at the end of the fixed term the Landlord incurred additional costs and he was awarded these costs in the decision of August 26, 2016. The Landlord said because he was successful in his application he should also recover the filing fee of \$100.00 from the Tenant. The Landlord requested the monetary order for \$370.50 should stand in effect.

The Tenant said section 57 (3) says an over holding tenant is only responsible for rent until the day the tenant moves out. The Tenant continued to say he is only responsible for the rent until February 11, 2016 the day the bailiff evicted him. Therefore the monetary order should be reduced by 6 days in the amount of \$216.00. Further the Tenant said the Landlord could have showed the unit earlier if the Landlord would have given him a 24 Hour Notice of Entry and then the unit could have been rented earlier.

The Landlord said the unit was rented as soon as it could have been because he did not know when the bailiffs were coming to evict the Tenant so he could not tell a new tenant what date the unit would be available.

The Tenant continued to say if the Landlord is not successful then he is not responsible for the Landlord's filing fee of \$100.00. Further the Tenant said if the Landlord is successful in this hearing he is taking this decision to Judicial Review again.

Analysis

This review consideration is for two issues only; firstly the lost of rental income from February 11 to February 16, 2016 in the amount of \$216.00 and the recovery of the filing fee of \$100.00 from the Tenant. The decision of August 26, 2016 included both these items in the monetary award which was for the Landlord to retain the security deposit of \$547.50 and for a monetary order for \$370.50. The Judicial Review Decision dated February 23, 2017 ordered a reconsideration of these two items.

I have reviewed the Landlord's and the Tenant's testimony and evidence in my consideration of these two items. Firstly the Tenant is correct that section 57(3) says an over holding tenant is only responsible for rent until the day the tenant moves out of the rental unit. The Tenant was found and is responsible for the rent up to February 11, 2016. This is not at issue. The Landlord made his application for rent from February 1, 2016 to February 16, 2016 when he rented the unit to a new tenant on February 17, 2016. This time period included 6 days February 11 to 16, 2016 when the Tenant was not in the unit but the Landlord was not able to rent the unit because of the Tenant's actions. The Landlord needed 2 days to clean the unit and then the Landlord needed to show the unit to potential tenants. The Landlord's application is for loss or damage for those 6 days and the compensation the Landlord is seeking is the daily rent of \$36.00 per day or damages of 6 days at \$36.00 in the amount of \$216.00.

Section 67 of the Act (Director's orders: compensation for damage or loss) says:

Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, 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.

The Tenant did not comply with the tenancy agreement by not vacating the rental unit on January 31, 2016 as agreed in the tenancy agreement. Consequently I find the Tenant has caused the Landlord damage or loss in the form of lost rental income from February 11, 2016 to February 16, 2016. I award this amount to the Landlord.

Further as the Landlord has been successful in this matter I order the Landlord to recover the filing fee of \$100.00 from the Tenant.

Consequently I find for the Landlord and my decision is that the monetary order dated August 26, 2016 awarded to the Landlord in the amount of \$370.50 stands in full effect.

Conclusion

The monetary order for \$370.50 dated August 26, 2016 stands in full effect.

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: July 17, 2017

Residential Tenancy Branch