



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The landlord and tenant Y.W., appeared at the hearing on behalf of the tenants. Y.W., explained that her husband was in China and she had permission to speak on behalf of both of them. Both parties were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The landlord explained that the Landlord's Application for Dispute Resolution (Landlord's Application) and evidentiary package were sent to the tenants individually by Canada Post Registered Mail on January 17, 2017. Y.W. confirmed receipt of both of these packages shortly after their mailing. I find that the tenants have been duly served with the landlord's application and evidentiary packages pursuant to sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for loss suffered as a result of the tenants breaking their lease?

Is the landlord entitled to a return of the filing fee?

Background and Evidence

Testimony provided by the landlord explained that this was a fixed-term tenancy that was set to run from March 1, 2016 to February 28, 2018. Rent was \$2,500.00 per month and a security deposit of \$1,250.00 was returned to the tenants at the conclusion of the tenancy.

The landlord explained that she was seeking a Monetary Order of \$5,600.00 in damages for the tenants having broken their fixed term tenancy agreement. The landlord testified that the tenants gave notice on October 31, 2016 of their intention to vacate the rental unit at the end of December 2016. The tenants moved out of the rental unit on December 31, 2016.

On February 10, 2017 the landlord was able to re-rent the apartment to a new tenant. The landlord said that the Monetary Order she sought was in reflection of \$2,500.00 in rent for January 2017, along with partial rent for February 2017 of \$1,250.00. In addition, the landlord is seeking \$100.00/month in lost rental income for 18.5 months, the amount of time that remained on the fixed-term rental agreement signed between the parties. The landlord explained that because of a difficult rental market, she was unable to find an occupant willing to rent the unit for the previous rate of \$2,500.00 per month.

During the course of the hearing the landlord provided testimony that the tenants gave their written notice to end the tenancy on October 31, 2016. On November 1, 2016 the rental unit was placed on three websites advertising the unit as being vacant and available for rent starting January 1, 2017. Not finding any success in locating a renter, the landlord reduced the rental rate to \$2,400.00 per month. The landlord said that between November 6, 2016 and January 8, 2017 she toured the home 17 times to perspective renters.

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 October 31, 2016. The landlord testified that upon receipt of this notice she posted three online ads on November 1, 2016 listing the apartment for rent for January 1, 2017. As she was unable to find renters through these ads, the landlord lowered the rent she sought for the apartment by \$100.00 per month. Between November 6, 2016 and January 8, 2017 the landlord showed the home to 17 potential renters. I find the landlord has made reasonable efforts to find a new tenant to move following the date that the tenants’ notice takes legal effect.

The landlord has applied for a Monetary Order of \$5,600.00. This figure represents unpaid rent for the month of January 2017, and partial rent for February 2017, along with \$100.00 compensation in lower rent that she is receiving from the new occupants. The landlord is seeking to recover the difference between the rental price paid by the new occupants (\$2,400.00) and the previous rental rate (\$2,500.00) agreed to with the tenants for the outstanding 18.5 months remaining on the fixed-term tenancy. I find that pursuant to section 7(1), “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 result.” In this case, the tenants did not comply with the tenancy agreement which committed them to the rental unit until its expiration. The landlord anticipated that her rental income would be fixed at the agreed upon rent. The tenants’ actions in breaking this lease led the landlord to suffer a loss which required her to accept a lesser rate of rent than she anticipated. The landlord is therefore entitled to recover the difference in the rental rate for the 18 months to which the tenants had committed themselves.

As the landlord was successful in her application, she may recover the \$100.00 filing fee associated with this application.

Conclusion

I issue a Monetary Order of \$5,700.00 in favour of the landlord as follows:

Item	Amount
Unpaid Rent for January 2017	\$2,500.00
Partially unpaid rent for February 2017	1,250.00
Difference in rental income (18.5 months x \$100.00)	1,850.00
Return of Filing Fee	100.00
Total =	\$5,700.00

The landlord is provided with a Monetary Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: July 7, 2017

Residential Tenancy Branch