



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC FF

Introduction

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

- a Monetary Order for damages or losses arising out this tenancy pursuant to section 67 of the *Act*, and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and landlord attended the hearing. The landlord explained that he was hard of hearing and required assistance to clearly understand the proceedings. The landlord was granted permission to have assistant, B.L., sit in with him during the hearing so that B.L., could clarify the questions for the landlord. Both the landlord and the tenant were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The tenant acknowledged receipt of the landlord's Application for Dispute Resolution and evidentiary package sent by Canada Post Registered Mail on January 16, 2017. Pursuant to section 89 the *Act*, the tenant is found to have been duly served with these documents.

At the outset of the hearing, the landlord requested that his monetary order be amended to \$5,232.39 from the \$6,257.61 submitted on his Monetary Order Worksheet. The landlord explained that a new tenant had been found mid-way through February 2017 and that he no longer was pursuing unpaid rent for this entire month. I find that the tenant will not be prejudiced by this change and pursuant to section 64(3)(c) amend the landlord's application for a monetary order to reflect this change.

Issue(s) to be Decided

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

Testimony provided by the landlord explained that this was a fixed-term tenancy that was set to run from July 6, 2016 to July 31, 2018. Rent was \$2,050.00 per month and a security and pet deposit of \$1,075.00 each were collected at the outset of the tenancy. On December 13, 2016 the landlord returned \$1,050 of each deposit to the tenant. It should be noted that the tenancy agreement displays rent of \$2,150.00 per month.

The landlord explained that he was seeking a Monetary Order of \$5,232.39 in satisfaction for the tenant having broken his fixed term tenancy agreement. Both parties confirmed that the tenant gave written notice on, or around November 21, 2016 of the tenant's intention to vacate the rental unit at the end of December 2016. The landlord stated that due to this late notice, he was unable to rent the apartment until mid-February 2017. The landlord said that the Monetary Order he sought was in reflection of rent for January and part of February 2017, along with \$2,700.00 to cover the loss in the difference of rental income for the remaining 18 months of the lease, \$41.99 to cover the costs of advertising the home online, along with \$90.62 of miscellaneous costs, and a return of the \$100.00 filing fee.

Two separate Monetary Order worksheets were submitted to the hearing as part of the landlord's evidentiary package. One dated January 24, 2017 sought a monetary award of \$6,257.61, while another dated February 19, 2017 sought \$7,225.59. Based on the testimony of the landlord, it was learned that the landlord in fact only sought \$5,232.39. The Monetary Order worksheet dated January 24, 2017 displays the following:

Items	Amount
Loss of January 2017 rent	\$2,150.00
Loss of partial February 2017 rent	975.00
Difference in rental income (\$150.00 x 18 months)	2,700.00
Advertisements	41.99

Toll Charges to show house	45.30
Tenant Screening (2 x \$22.66)	45.32
Return of Filing Fee	100.00
Total =	\$6,057.61

The Monetary Order worksheet dated February 19, 2017 seeks the following damages:

Items	Amount
Loss of January 2017 rent	\$2,150.00
Loss of partial February 2017 rent	975.00
Difference in rental income (\$200.00 x 19 months)	3,800.00
Advertisements	41.99
Toll Charges to show house	45.30
Tenant Screening (5 x \$22.66)	113.30
Return of Filing Fee	100.00
Total =	\$7,225.59

As I explained in the introductory portion of this decision, following opening remarks at the outset of the hearing the landlord stated that he wished to amend his application for a Monetary Order of \$5,232.39. I will therefore focus on this figure when considering the landlord's application for a Monetary Order.

Testimony was provided by the landlord that the rental unit remained vacant until the middle of February 2017 when it was rented for \$1,950.00. The landlord explained that immediately following receipt of the tenant's written notice to end tenancy on November 21, 2016, he placed the rental unit on Craigslist. The landlord walked me through the various postings, noting when they were posted and describing how these posts were constantly refreshed to ensure that they remained relevant.

The tenant agreed with the timeline provided by the landlord and with the efforts made by the landlord to re-rent the unit; however, the tenant disputed that any money was owed as a result of the tenancy. The tenant questioned the safety of the home, explaining he felt the home was unfit for habitation and stated that he suspected that mould, mildew and faulty electrical wiring rendered the home dangerous and led to health problems. Furthermore, the tenant argued that these ads misrepresented the

rental unit and did not properly illustrate the home. The tenant surmised that it was because of this misleading rental ad that the landlord could not rent the home sooner.

During the course of the hearing, the landlord acknowledged miscalculating the amount of a pet and security deposit due to be returned to the tenant and asked that any monetary award given to him reflect a \$100.00 payment that was to be made to the tenant due to the landlord's failure to return \$50.00 of the tenant's security and pet deposit following the conclusion of the tenancy. The landlord said that the \$100.00 figure should represent a doubling of the money owed to the tenant pursuant to section 38(6) of the *Act*.

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, or around November 21, 2016. The landlord gave undisputed sworn testimony that upon receipt of this notice he posted an online advertisement in November 2016, three times in December 2016, and twice in January 2017 listing the unit for rent and immediate occupation. 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 he deemed the home uninhabitable and found it to be dangerous, no specific actions were taken on his part to address these matters through the proper legal channels. There exist numerous forms of relief through the *Residential Tenancy Act* for tenants who find themselves in precarious situations. Despite the many frustrations with the rental unit identified at the hearing by the tenant, no formal steps were taken by him to seek relief. As a result of his breaking the tenancy agreement, the landlord has suffered a loss.

I find that the landlord has made a *reasonable effort* to re-rent the unit following the tenant's departure from the property. I find that the landlord took immediate steps to place advertisements online upon receipt of the tenant's notice. Ultimately, the landlord should not be forced to suffer a loss as a result of a tenant breaking a contract. I therefore award the landlord compensation for unpaid rent for the month of January and partial rent for February 2017.

I am not satisfied that the landlord is entitled to any additional costs associated with this tenancy. The monetary work sheets submitted to the hearing as part of the landlord's evidentiary packages are inconsistent with one another and with the figure cited by the landlord at the start of the hearing. On the monetary order worksheet from January 24, 2017 the landlord seeks \$150/month x 18 months for less rent, while the February 19, 2017 monetary order worksheet notes \$200.00/month x 19 months. During the course of the hearing the landlord said that rent was lowered from \$2,100.00 to \$1,950.00 per month, yet the tenancy agreement shows rent of \$2,150.00 per month and testimony provided to by the landlord stated that rent was \$2,050.00 per month. Furthermore, the items described in the landlord's monetary order worksheet, specifically the tolls and the tenant screening, are costs that must be absorbed by a landlord as part of the costs associated with running a business.

As the landlord was partially successful in his application, he may recover the \$100.00 filing fee from the tenant. Using the offsetting provisions contained in section 72 of the *Act*, the landlord may apply this award against the outstanding \$100.00 that remains to be paid to the tenant for his pet and security deposit.

I will issue a Monetary Order to the landlord in reflection of unpaid rent for January 2017 and partially unpaid rent for February 2017. Due to the inconsistencies in the amount of rent cited during the hearing, I will base my award on the figure contained in the tenancy agreement.

Conclusion

I issue a Monetary Order of \$3,125.00 in favour of the landlord as follows:

Item	Amount
Unpaid Rent for January 2017	\$2,150.00
Partial unpaid rent for February 2017	975.00

Recovery of Filing Fee	100.00
Less Security Deposit	(-100.00)
Total =	\$3,125.00

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 17, 2017

Residential Tenancy Branch