



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NOVAK HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for unpaid rent pursuant to section 67; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. One tenant attended on behalf of both tenants. The tenant confirmed receipt of the landlord's Application for Dispute Resolution package and additional evidentiary materials. The landlords confirmed receipt of the tenants' evidentiary materials.

Preliminary Issue: Landlord's Failure to Amend Amount Sought Prior to Hearing

Pursuant to Residential Tenancy Policy Guideline No. 11 and Residential Tenancy Branch Rule of Procedure No. 4, I find that the landlord has failed to make an amendment in accordance with the Act. According to Rule No. 4, an applicant may amend (add to or alter) their claim by completing an amendment to an application form and filing the form with supporting evidence to the Residential Tenancy Branch and serving those materials to the other party. Rule No. 4.2 provides that if an amendment is sought at the dispute resolution hearing, the amendment must be such that it could have been reasonably anticipated by the other party (for example, additional unpaid rent).

The landlord testified that she originally applied for three months' unpaid rent. She testified that, after the fact, she submitted a monetary order worksheet that provided other amounts sought above and beyond unpaid rent owed by the tenants. The landlord testified that she was unaware of the process to change the amount requested. As the

landlord has not applied to amend the amount she has sought and the tenant cannot be expected to have been aware of the additional amount sought by the landlord at this hearing, I decline to amend the landlord's application. I have only considered the landlord's application for unpaid rent. Any other monetary amount sought by the landlord is *dismissed with leave to reapply*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on November 1, 2013 as a 12 month fixed term. The tenants' monthly rental amount was \$3200.00 payable on the first of each month. The tenants have vacated the residence but the landlord continues to hold the tenants' \$1600.00 security deposit and \$1600.00 pet damage deposit paid at the outset of the tenancy. The landlord sought to recover unpaid rent totalling \$9870.00 as well as recovery of the filing fee for this application.

The landlords and tenant both acknowledged that an Arbitrator for the Residential Tenancy Branch issued an Order of Possession to the tenant as a result of the tenants' failure to pay rent. The tenant testified that he and his co-tenant vacated the rental unit on or about December 3, 2016 in accordance with the Order of Possession whereas the landlord submitted that the tenants were still in the unit on December 4, 2016 and therefore she requests over-holding fees for the tenants' additional stay.

The tenants did not dispute that the rent remains unpaid for the months of October and November 2016. The landlords argued that the tenant should also be responsible for December 2016 rent. The landlords testified that the tenant did not vacate the residence until on or about December 4, 2016. Furthermore, the landlords provided sworn undisputed testimony that the rental unit was re-rented for January 2017 and that no one resided in the rental unit for the remainder of December 2016.

The landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent. That 10 Day Notice was found valid by a residential tenancy branch arbitrator. The tenants vacated the rental unit in accordance with the Order of Possession provided to the landlords by the residential tenancy branch arbitrator. At this hearing, the tenants did not dispute that

these two months' rent (October and November 2016) were owed in the amount of \$3290.00 each.

Analysis

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. That 10 Day Notice was found valid by a residential tenancy branch arbitrator. The tenants vacated the rental unit in accordance with the Order of Possession provided to the landlords by the residential tenancy branch arbitrator.

Given that the tenants did not dispute that two months' rent (October and November) were owed, the landlord is entitled to October 2016 and November 2016 rent in the amount of \$3290.00 each month for a total of \$6580.00.

The tenant argued that the landlord was not entitled to rent for the month of December 2016 however I find that the landlord provided sufficient evidence to show that the landlords were unable to re-rent the unit for the month of December 2016 because the tenants remained in the rental unit after December 1, 2016. The tenants' failure to pay the rent for October and November and resulting end of tenancy does not then entitle them to remain in the rental unit in December 2016 without any compensation to the landlord.

Beyond the fact that the tenants did not vacate the rental unit in a timely period that allowed the landlord to re-rent the unit immediately, I find that the landlord's evidence shows that the rental unit was in no condition to be rented out prior to further time to clean-up and repair the rental unit.

I accept the evidence offered by the landlord that the tenants did not vacate the rental unit until December 4, 2016 and that, therefore she was unable to re-rent the unit for the month of December 2016 incurring the loss of December 2016 rent. I issue the attached monetary order that includes the landlord's application for 3 months' rent totalling \$9870.00 in unpaid rent for October, November and December 2016.

Pursuant to section 72 of the Act, I allow the landlord to retain the tenants' security and pet damage deposit totalling \$3200.00. There is no interest payable on these deposits.

As the landlords were successful in this application, I find that the landlords entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlords' claim with respect to damage to the rental unit *with leave to reapply*.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for October 2016	\$3290.00
Rental Arrears for November 2016	3290.00
Rental Arrears/loss for December 2016	3290.00
Less Security Deposit and Pet Damage Deposit (\$1600.00 each)	-3200.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$6770.00

The landlords are provided with this 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: August 30, 2017

Residential Tenancy Branch