



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF, MNDC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (the landlord) attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on March 20, 2017. Both parties confirmed receipt of the tenant's submitted documentary evidence. Neither party raised any issues regarding service. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?
Is the tenant entitled to a monetary order or money owed or compensation for damage or loss, return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on July 1, 2016 on a fixed term tenancy ending on January 31, 2017 as per the signed tenancy agreement dated July 4, 2016. The monthly rent was \$995.00 payable on the 1st day of each month. A security deposit of \$497.50 was paid on December 1, 2014. Both parties confirmed that the tenancy ended on January 31, 2017 that the tenant provided his forwarding address in writing for the return of the security deposit on March 10, 2017.

The landlord seeks a monetary claim of \$1,095.00 which consists of:

Unpaid Rent, January 2017	\$995.00
Recovery of Filing Fee	\$100.00

The landlord claims that the tenant failed to pay the rent for the last month of the tenancy for January 2017.

The tenant disputes the landlord's claim stating that as part of the "Tenant Relocation Plan, the tenant agreed to end his tenancy and be compensated for 2 Months of Rent as per the submitted copy of the letter dated August 25, 2016 that the tenant received from the landlord. The tenant also refers to 3 page submissions of email exchanges between the landlord and the tenant regarding the "Tenant Relocation Plan". The tenant refers to emails and specifically from December 29, 2016 at 1:57 from the landlord and the response from the tenant at 2:51pm. This was confirmed in the landlord's email dated December 29, 2016 at 4:22pm which states,

Hi Greg,

I will notify accounting that you will be using 1 month of your rental compensation to pay for January 2017s rent. The other months compensation, along with the deposit and moving expense, will be mailed to you after you vacate the unit.

The landlord argues that the tenant was illegally subletting the rental premises and that the intent of the plan was to only compensate tenants who were occupying the rental premises. The tenant argued that detailed letter from the landlord did not provide for any restrictions. The landlord was unable to provide any further evidence that the tenant did not qualify for the "Tenant Relocation Plan". Both parties confirmed that the named tenant was listed as the tenant for the listed rental unit.

The tenant seeks a monetary claim of \$2,242.50 which consists of:

Return of Security Deposit	\$497.50
Compensation, 1 months rent	\$995.00
Moving Expense	\$750.00

The tenant claims that as part of the above noted "Tenant Relocation Plan" the landlord offered and the tenant accepted compensation in exchange for the tenancy to end and give possession of the rental premises back to the landlord on January 31, 2017. The tenant claims as part of this agreement the tenant is also owed the return of the original security deposit, a further 1 months compensation and moving expenses. The tenant has reiterated the offered compensation in the landlord's letter dated August 25, 2016 as well as the email exchange between the landlord and the tenant.

The landlord argued that the tenant is not entitled to compensation as he was illegally subletting the rental premises without the landlord's knowledge or permission. The landlord also noted that the invoice for moving provided by the tenant was fraudulent as it does not contain a GST number and that the telephone number provided comes back in a google search to a P. Construction and not for the named company, P.S. Contracting + Moving.

The tenant argued that the invoice is from his friend's company and that he was unable provide an explanation as to why the telephone number would come back in a google search for a different company name. The tenant also argues that the landlord's compensation offer letter does not require a receipt.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I find based upon the evidence provided by both parties that the landlord has failed to establish a claim for unpaid rent for January 2017. The tenant has provided sufficient evidence that the non-payment of rent was due to the landlord's "Tenant Relocation Plan" compensation agreement. The landlord has failed to provide sufficient evidence to satisfy me that a sublet by the tenant has invalidated the landlord's compensation offer. As such, the landlord's application is dismissed.

As for the tenant's claim, I find based upon the evidence provided by both parties that both parties entered into an agreement as noted above to end the tenancy and that in exchange the landlord would compensate the tenant as per an offered "Tenant Relocation Plan". Compensation was agreed as per the attached emails submitted by the tenant:

Free Rent, January 2017

Lump sum payment for 1 months rent, \$995.00

A flat rate of \$750.00 will be paid towards moving expenses

I find that the tenant was entitled to free rent for January 2017 equal to \$995.00 as ordered above in the landlord's portion of their application. I also find that the tenant is entitled to a lump sum payment for \$995.00.

I find that the tenant has failed in his claim for \$750.00 for moving expenses. The landlord has claimed that the invoice for moving expenses of \$801.15 was fraudulent. The claim was disputed by the tenant. The landlord has reference a "google" search in which the named company's telephone number reveals a search result for a different company. A comparison shows that neither is related and the tenant is unable to provide an explanation of how the registered company name differs from the invoice provided by the tenant. The tenant only stated that the named company belongs to his friend. As such, I find on a balance of probabilities that I prefer the evidence of the

landlord over that of the tenant. The tenant has failed to provide sufficient evidence of moving expenses incurred. This portion of the tenant's claim is dismissed.

The tenant has established a total claim of \$1,492.50 which consists of:

\$497.50	Return of Original Security Deposit
\$995.00	Compensation, 1 months' rent

The tenant having been successful is entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord's application is dismissed.

The tenant is granted a monetary order for \$1,492.50.

This order must be served upon the landlord. Should the landlord fail to comply, the 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 08, 2017

Residential Tenancy Branch