



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

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

- an Order of Possession pursuant to section 55;
- a Monetary Order pursuant to section 67;
- an Order to retain the security or pet deposit pursuant to section 38; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions. The tenant PM (the "tenant") primarily spoke for both co-tenants.

As both parties were in attendance I confirmed that there were no issues with service. The tenant confirmed receipt of the landlord's application and evidence. The landlord confirmed they were served with the tenant's evidence. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's application and their respective evidence.

At the outset of the hearing the landlord said that the Order of Possession was checked in error and is not being sought. The portion of the application seeking an Order of Possession is withdrawn.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the security deposit for this tenancy?

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

Background and Evidence

The parties agreed on the following facts. This fixed term tenancy began on June 8, 2016 and was scheduled to end on June 30, 2017. The monthly rent is \$2,700.00. A security deposit of \$1,350.00 was paid by the tenants at the start of the tenancy and it is still held by the landlord.

The tenants gave written notice on January 13, 2017 of their intention to end the tenancy on February 28, 2017. Upon receiving the notice the landlord posted the rental unit as available on several online platforms. The landlord was unable to find a new tenant and lowered the monthly rental price. Ultimately, no new tenant was found.

The tenancy agreement signed by the parties and submitted into written evidence includes a clause which states “if the tenant ends the fixed term tenancy prior to its termination date, the tenant will pay any financial hardship that the landlord suffers from the lease not being fulfilled up to a maximum CAD 2 months’ rent as liquidated damages”.

The tenant testified that though they signed the tenancy agreement which includes this clause they were advised by the landlord that it would not be enforced.

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 January 13, 2017. The landlord testified that upon receipt of this notice the unit was advertised online listing the unit available for March 1, 2017. As she was

unable to find renters through this ad, the landlord eventually reduced the rental price. 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.*

The landlord has also applied for liquidated damages in the amount of \$5,400.00, the equivalent of 2 months' rent as provided in the tenancy agreement. The tenant testified that they were informed the landlord would not enforce this clause. I do not find the tenant's testimony to be reasonable. I find that there is a written agreement signed by the parties. I find that the agreement provides the landlord with the option of seeking up to 2 months' rent to recover any losses suffered as a result of an early end of the tenancy. I find that the tenants violated their tenancy agreement and the landlord had to take steps to mitigate future loss. These steps involved making efforts to place the ads and I accept the landlord's evidence that they were unable to find a new tenant.

Section 67 of the *Act* states, 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. I find that a violation of the tenancy agreement occurred by the tenants, that the landlord had to make efforts to rectify this violation and that landlord is entitled to compensation as per section 2 of the tenancy agreement addendum signed by the parties.

The landlord has also applied to retain the security deposit from the tenants. Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file a claim against a tenant's deposit within 15 days of the *later* of the end of the tenancy or the date a tenant's forwarding address is received in writing. The landlord filed the present application on March 10, 2017 within the 15 days of the tenancy ending on February 28, 2017. The landlord has therefore fulfilled the requirements of section 38 of the *Act*. Subsections 4 of this section states that, "A landlord may retain an amount from a security deposit or a pet damage deposit if, after the end of the tenancy, the director orders that the landlord may retain the amount." I find that the landlord has suffered a loss as a result of this tenancy and may therefore retain the security deposit pursuant to section 38 and 72 of the *Act* against the monetary award to which she is entitled.

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 \$4,150.00 in favour of the landlord as follows:

Item	Amount
Liquidated Damages (2 months rent x \$2,700.00)	\$5,400.00
Recovery of Filing Fee	\$100.00
Less Security Deposit	(-\$1,350.00)
Total =	\$4,150.00

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: August 9, 2017

Residential Tenancy Branch