



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 MNDC MNR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for unpaid rent and damage to the rental unit pursuant to section 67; authorization to retain the tenant's security deposit pursuant to section 38; and authorization to recover the filing fee pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:48 pm in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 pm. The landlord's representative ("the landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord testified that the tenant was served with the landlord's Application for Dispute Resolution ("ADR") by registered mail on April 28, 2017 and with the additional evidentiary submissions submitted by the landlord on May 2, 2017. The landlord provided the registered mail tracking information and number from Canada Post. The landlord testified that she has spoken with the tenant personally since his move-out date and that he is aware of this application. Based on the undisputed testimony of the landlord and supporting documentary evidence submitted by the landlord, I find that the tenant was deemed served with the landlord's Application for Dispute Resolution on May 3, 2017 in accordance with section 89 and 90 of the Act and with the additional evidence on May 5, 2017 in accordance with those provisions.

Issue(s) to be Decided

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit?

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

Background and Evidence

This tenancy began on February 1, 2017 as a fixed term tenancy scheduled to end on July 31, 2017. A copy of the written tenancy agreement was submitted as evidence at this hearing. The rental amount of \$3000.00 was payable each month. The tenant sent an email to the landlord

on February 11, 2017 to advise that he would vacate the rental unit at the end of March 2017. The landlord submitted a copy of the email with the tenant's notice to end tenancy. The landlord testified that the tenant vacated the rental unit on March 31, 2017 leaving the keys behind inside the rental unit. As of the date of this hearing, the landlord continues to hold a \$1500.00 security deposit paid by the tenant at the outset of this tenancy (January 19, 2017).

The landlord testified that, despite attempts to schedule the conditional inspection at the end of this tenancy, the tenant failed to attend to the condition inspection on move-out. The landlord submitted a copy of the report prepared by the landlord and sent to the tenant at his forwarding address. The landlord also provided the dates that were proposed for a condition inspection to the tenant. The landlord testified that the tenant provided his forwarding address by text on April 22, 2017.

The landlord testified that, when they received the notice that the tenant would vacate the rental unit, they advertised immediately and were able to re-rent the unit for April 15, 2017 but that they suffered rental loss as a result of the tenant's decision to vacate the unit prior to the end of the fixed term. The landlord testified that the tenant paid rent for March 2017 but that they suffered rental loss of \$1500.00 as a result of the 2 weeks without a tenant at the beginning of April 2017.

The landlord testified that the tenant had incurred two separate fines from the strata management at the residential premises. The landlord submitted copies of the letters and other correspondence to the tenant with respect to the strata fines. The fines were a result of excessive noise from the unit during the tenancy and smoking cigarettes within the rental unit.

The landlord also testified that the tenant did not clean the rental unit before moving out. The landlord submitted a condition inspection report prepared at the end of the tenancy. The report noted that the tenant did not show up at agreed time. The landlord testified that the tenant was given multiple opportunities to arrange an inspection of the unit after her moved out but that he did not agree to any of the times or dates provided and, as indicated on the report, failed to show when a date had been arranged. The landlord referred to the residential tenancy agreement that states, "*The Landlord will conduct a professional cleaning which will be charged to the Tenant's security deposit as follows: ... \$150.00...depending on the condition of the carpet, a professional carpet cleaning may be conducted by the Landlord at the Tenant's expense*".

The condition inspection report also noted: that a utility bill was left unpaid; that \$150.00 in additional cleaning was required; and that there were \$400.00 in fines outstanding to the strata management company. The landlord provided copies of the two strata fines levied against the tenants. The landlord referred to the residential tenancy agreement that states,

The Tenant agrees that he is solely responsible for all Strata warnings and fines levied against the unit during the lease term...If the Tenant fails to pay the Landlord the full amount within 3 days [of notification], the Tenant becomes liable

to pay the Landlord an administrative charge equal to 50% of the fine plus the full amount of the fine...

The residential tenancy agreement addendum also indicates that a tenant is responsible for paying specific utility bills. Two power/electricity bills were submitted in the amount of \$375.95 and \$291.54 (for the tenant's portion of the bills). These bills indicated a date range from December 30, 2016 to March 30, 2017. The addendum to the tenancy agreement also provided that "administrative damages and related charges may be applicable if the Tenant terminates this lease prior to the lease end date indicated on the lease". The landlord sought \$750.00 to address the tenant terminating the lease prior to its end date.

The landlord sought a monetary order against the tenant calculated as follows,

Item	Amount
Rental Loss	\$1500.00
Outstanding Utility Bill	667.49
Cleaning at the end of tenancy	150.00
Strata Fines unpaid at end of tenancy	400.00
Penalty on Strata Fines	200.00
Liquidated damages	750.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Sought by Landlord	\$3767.49

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 (in this case, the landlord) bears the burden of proof.

The landlord must prove the existence of the damage/loss. I find that the landlord has proven damage and loss as a result of this tenancy by virtue of the provision of the condition inspection report that accurately reflects her testimony and indicates that the tenant had opportunities to attend the condition inspection at move-out.

The landlord must prove that the damage/loss stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Again, the condition inspection report is clear and, according to Residential Tenancy Regulation No. 21 as laid out below, the condition inspection report is the best evidence available of the condition of the unit unless proven otherwise.

Evidentiary weight of a condition inspection report

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The landlord must also provide evidence that can verify the actual monetary amount of the loss/damage. I find that the landlord has provided evidence with respect to monetary amount of most of the items she seeks to recovery as identified below. The residential tenancy agreement submitted by the landlord shows the amount of rent owed and her additional accounting materials document unpaid rent. The condition inspection report documents any damage at the end of the tenancy that is the responsibility of the tenant.

I find that the landlord has proven that the tenant vacated the rental unit without sufficient notice and prior to the end of the fixed term. I accept the testimony of the landlord, supported by her documentary evidence, that the tenant provided notice that he would vacate on March 31, 2017 and that he vacated on that date but that his tenancy was not scheduled to expire until July 31, 2017 (4 months prior to the end of the fixed term).

I also accept the evidence of the landlord that she advertised immediately and re-rented the unit for April 15, 2017. I find that the landlord mitigated her loss by re-renting the unit but that she lost \$1500.00 as a result of the 2 weeks without a tenant at the beginning of April 2017. Therefore, I find that the landlord is entitled to recover \$1500.00 for the 2 weeks in April 2017 with no tenant/rental income.

I accept the landlord's testimony that the tenant had incurred two separate fines from the strata management at the residential premises. The landlord provided proof in the form of letters from the strata and notations in the landlord's records regarding these fines. I find that the landlord is entitled to \$400.00 for strata fines owed by the tenant. The residential tenancy agreement allows the landlord to recover 50% in addition to the fine amounts when those fines remain unpaid. Therefore, the landlord is entitled to \$600.00 for fines and the penalty for not paying those fines and for the resultant expense to the landlord for non-payment of those fines.

I find that the landlord proved, with copies of the bills and calculations of the utility amounts owed during the course of the tenancy and reference to the residential tenancy agreement submitted for this hearing that the landlord is owed \$667.49 in outstanding utility bill amounts.

I accept the testimony of the landlord that the tenant did not clean the rental unit before moving out. I accept the condition inspection report as the best evidence to prove the condition of the unit at the start and end of the tenancy. I accept the evidence in the condition inspection report

and the undisputed testimony of the landlord that \$150.00 in additional cleaning was required for the rental unit.

I find that the landlord has proven that the lack of notice by the tenant and his end of the tenancy prior to the agreed upon expiry date of the fixed term tenancy prevented her from renting the unit immediately after the tenant vacated the premises. I accept the undisputed evidence of the landlord's efforts to rent and her testimony that, because of her efforts, she was able to re-rent the unit as of April 15, 2017. Therefore I find that the landlord is entitled to \$1500.00 for one half month of rental loss as the tenant failed to provide adequate notice of his vacate the rental unit.

Further, I find that the tenant was clearly subject to a fixed term tenancy agreement. I accept the testimony of the landlord that there are inherent administrative costs to the landlord when the tenant choses to end the tenancy and vacate the rental unit prior to the expiry of the fixed term tenancy. Given that this tenancy was scheduled to expire in July 2017 and the tenant vacated the rental unit approximately 4 months prior to the end of the fixed term, I find that the landlord is entitled to a nominal amount to reflect loss in the costs for advertising, showing and re-renting the rental unit as well as the administrative expenses relating to recovering their losses, including the preparation and attendance at this hearing. I find, in the very specific circumstances as described by the landlord and the efforts and time she has expended, the landlord is entitled to a nominal amount of \$250.00. I dismiss the landlord's application to recover a \$750.00 liquidated damages amount as I find that amount is punitive and does not accurately reflect a cost to the landlord in addition to the costs described above (administrative expenses, time and effort).

In accordance with section 72, I find that the landlord is entitled to retain the tenant's \$1500.00 security deposit towards the monetary amount granted below. As the landlord was successful in her application, I find that the landlord is also entitled to recover the \$100.00 filing fee for this application from the tenant.

The landlord is entitled to a monetary order against the tenant calculated as follows,

Item	Amount
Rental Loss	\$1500.00
Outstanding Utility Bill	667.49
Strata Fines unpaid & penalty as per <i>rta</i> (\$200 + \$200+ \$100 + \$100)	600.00
Cleaning at the end of tenancy	150.00
Nominal Amt for ending a Fixed Term early	250.00
Less Security Deposit	-1500.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1767.49

Conclusion

I allow the landlord to retain the tenant's security deposit pursuant to section 72.

I issue a monetary order to the landlord in the amount of \$1767.49.

The landlord is provided with this 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 *Manufactured Home Park Tenancy Act*.

Dated: October 2, 2017

Residential Tenancy Branch