



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EXCLUSIVE PROPERTY RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, MNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (“the “Act”).

On July 4, 2017, the Landlord filed an Application requesting an order of possession; to recover unpaid rent and /or utilities; for compensation for damage or loss; to keep the security deposit; and to recover the cost of the filing fee.

On November 28, 2017, the Tenants filed an Application for a monetary order for damage or loss; for the return of the security deposit; and to recover the cost of the filing fee.

The matter was set as a teleconference hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The parties testified that they exchanged the documentary evidence before me. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The parties testified that the Tenant moved out of the rental unit on June 12, 2017. The Landlord’s request for an order of possession for the rental unit is not required and is dismissed.

On December 13, 2017, the Landlord submitted documentary evidence to the Residential Tenancy Branch in response to the Tenant’s application. The Landlord included a monetary order worksheet indicating that the Landlord has increased his monetary claim to \$10,287.50.

The Landlord has included a loss of rent for August 2017, and September 2017, and additional costs for showing and advertising the rental unit.

The Residential Tenancy Branch Rules of Procedure require an applicant to complete and submit an amendment to application form and serve the amended application to the respondent not less than 14 days prior to the hearing. In circumstances such as when the amount of rent owing has increased since the application was made, the application may be amended at the hearing.

I grant the Landlords request to include the claim for a loss of rent for August 2017, and September 2017, and the additional costs for showing and advertising the rental unit.

At the end of the hearing the Tenant submitted that he received the Landlord's documentary evidence and had an opportunity to prepare for the hearing but his co-Tenant did not. The Landlord testified that he served his documents via registered mail to the forwarding addresses provided by the Tenants.

I find that the Tenants have been sufficiently served with the Landlords evidence for the purposes of the Act, and have had an opportunity to consider and respond to it. The Tenant, Mr. R.N. testified at the start of the hearing that he had received the Landlord's evidence. The Tenants had a full opportunity to respond to the Landlords claims at the hearing. In addition the Tenants are jointly and severally liable and Mr. R.N. confirmed he received the evidence.

Issues to be Decided

- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Is the Landlord entitled to compensation for damage or loss?
- Is the Tenant entitled to compensation for damage or loss?

Background and Evidence

The Parties testified that the tenancy began on March 24, 2017, as a one year fixed term tenancy to end on April 30, 2018. Rent in the amount of \$2,875.00 was due on the first day of each month. The Tenants paid the Landlord a security deposit of \$1,437.50.

The Landlord provided a copy of the residential tenancy agreement and addendum to the lease agreement.

Landlords Claims

Loss of Rent

The Landlord is seeking compensation in the amount of \$8,050.00 due to a loss of rent for the months of July 2017; August 2017; and 24 days of September 2017.

The Landlord testified that on May 30, 2017, the Tenants sent an email stating that they were terminating the lease. The Tenants paid the rent for June 2017, and moved out of the rental unit on June 12, 2017.

The Landlord testified that on June 19, 2017, they began advertising the rental unit on local internet sites and were able to re-rent the unit to new tenants on September 24, 2017, for \$2,875.00 per month. The Landlord provided a copy of the tenancy agreement for the new tenant that indicates the tenancy started on September 25, 2017.

In response, the Tenant Mr. R.N. submitted that they are not responsible to pay for a loss of rent because the parties reached a mutual agreement to end the tenancy. He submitted that the Landlord was supposed to bring a mutual agreement to end tenancy document to the move out inspection. He submitted that there is no signed agreement, but he referred to the documentary evidence of a June 5, 2017, email as evidence of the agreement.

The Tenant, Mr. R.N. also referred to an emails sent by the Landlord indicating that the Landlord will return the security deposit and the rent will be pro-rated. The Tenant submitted that he feels the emails show that there was a mutual agreement to end the tenancy.

The Landlord provided a copy of an email dated May 29, 2017, from the Tenant stating the utility situation for the rental unit was not agreed upon in writing and voids the term of the lease. The Tenant indicates they will be leaving and that the Landlord needs to start finding new tenants.

The Landlord testified that the emails sent to the Tenant regarding the security deposit and return of pro-rated rent are dependent on whether or not the rental unit would be rented out immediately. He submitted that when the emails were sent, there was no way to know whether or not the unit would be re-rented. He submitted that the emails were not a mutual agreement to end the tenancy.

Lease Break Fee

The Landlord is also seeking compensation in the amount of \$2,237.50 for the cost of advertising and showing the unit to new tenants. The Landlord testified that they had quite a few showings of the rental unit. The Landlord provided copies of invoices for showing and advertising the unit, and an invoice for the amount of half a month's rent the Landlord paid to a property management service as commission for new tenant placement.

The Landlord testified that there is no term regarding a lease break fee contained within the tenancy agreement.

The Tenants submitted that they drove by the property and noticed the Landlord was renovating the unit. The Tenant submitted that he does not feel the Landlord tried hard to re-rent the unit.

The Landlord testified that they advertised the unit for immediate occupancy and did not renovate. The Landlord provided a document showing the rental property was advertised on a local website from May 25, 2017, until late September 2017. The Landlord provided a copy of the rental advertisement describing the unit and location.

Utility Cost

The Landlord is seeking compensation in the amount of \$28.45 for a utility cost. The Landlord submitted that the Tenants agreed to pay the amount of \$28.45 at the end of the tenancy as noted within the Condition Inspection Report.

Security Deposit

The Landlord testified that the Tenants provided their forwarding address within an email the Landlord received on June 19, 2017. On July 4, 2017, The Landlord applied for dispute resolution requesting to retain the security deposit.

Tenants Claims

The Tenants are seeking compensation in the amount of \$2,311.06 for the following:

Pro-rated Rent for 18 days of June 2017	\$1,725.00
NSF Fee	\$48.00
Loss of Work	\$300.00
Hydro Bill	\$238.08

June Rent

The Tenants submitted that the tenancy was ended by mutual consent and therefore the Landlord owes them \$1,725.00 for an over payment of June 2017, rent.

Bank Fee and Loss of Wages

The Tenants are seeking to recover the cost of an NSF bank fee from the Landlord. The Tenants submitted that the Landlord tried to deposit a cheque for July 2017, rent and the Tenant was charged an NSF fee.

The Tenant submitted that when the Landlord attempted to cash the rent cheque, the Tenant was unable to get to work and he lost a day of work which cost him \$300.00 in wages.

The Landlord submitted that they cashed the cheque because the tenancy is a lease and the Tenants are responsible to pay the rent. The Landlord submitted that there was no verbal or written agreement to end the tenancy.

Hydro Bill

The Tenants submitted that they received the hydro bill in the amount of \$528.88 in the mail but they have not paid it. They submitted that they need the Landlords portion of the hydro payment in order to pay the bill. The Tenants submit that the cost of the hydro should be split on a 50/50 basis.

The Tenant submitted that they reached out to the Landlord about a concern they had regarding the hydro costs. The Tenants live in the upper part of the rental property and they submitted that there is a lower suite rented to someone else. The Tenants submitted that there is only one hydro meter and they were paying the hydro costs for the lower unit. The Tenants submitted that the tenancy agreement is silent on how the hydro costs will be split.

The Tenants submit that they asked the Landlord to sign a mutual agreement to end the tenancy but the Landlord did not follow through. The Tenant submitted that the hydro situation broke the trust of the agreement.

In reply, the Landlord submitted that the tenancy agreement is clear that hydro costs are not included in the rent. He submitted that the agreement does not break down how the hydro costs are split between the upper and lower unit; however, he submitted that the costs are shared on a 65% to 35% basis.

The Landlord submitted that the Tenants reached out to complain about the hydro situation and they asked for a discount. The Landlord submitted that the parties reached an agreement. The Landlord provided a copy of an email dated March 29, 2017, which the Landlord sent to the Tenants. The email indicates that the rental unit only has one meter for two units and the fair split is 2/3 for upstairs and 1/3 for downstairs. The email indicates that the Landlord will pay the Tenants 1/3 of the bill and the Tenants can pay the entire bill.

The email regarding hydro indicates that this arrangement ensures the Tenants get paid on time and don't have to deal with getting payment from the neighbour. The email asks the Tenant to let the Landlord know if they are ok with this arrangement or if they have an alternative proposal. A copy of an email dated April 5, 2017, indicates the Landlord accepted the Tenant's request that the Tenants be reimbursed by the Landlord using electronic money transfer.

During the hearing, The Landlord agreed to split the cost of the hydro bill on a 50/50 basis.

Security Deposit

The Tenants have applied for the return of the security deposit. The Tenants provided their forwarding address to the Landlord on June 19, 2017.

Analysis

The Residential Tenancy Branch Policy Guideline #30 Fixed Term Tenancies states that:

*During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. For example, during the fixed term a landlord may end the tenancy if the tenant fails to pay the rent when due. A proper Notice to End Tenancy must be served on the tenant. During the fixed term a tenant may end the tenancy **if the landlord has breached a material term of the tenancy agreement.***

With respect to ending a tenancy due to a breach of a material term, the Residential Tenancy Branch Policy Guideline on Unconscionable and Material Terms states:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

The Residential Tenancy Branch Policy Guideline #3 Claims For Rent and Damages for Loss of Rent states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

Section 7 of the Act states,

if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant 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.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

Landlord's Claims

Loss of Rent

I find that there was no mutual agreement to end the tenancy. I do not find that the Landlord's emails to the Tenants amount to an agreement that the parties have mutually ended the tenancy.

I find that the Tenant did not give the Landlord sufficient notice to end the tenancy for a breach of a material term of the tenancy. The Tenant did not inform the Landlord in writing that there was a problem that needed to be corrected within a reasonable period of time, or the Tenant will end the tenancy. The Tenants raised a concern about hydro costs and I find that parties reached an agreement on how the hydro costs would be shared and paid. Close to two months later the Tenants were unhappy in the tenancy, for various reasons, and they told the Landlord they were leaving.

Pursuant to section 44 of the Act, the tenancy ended on June 12, 2017, when the Tenants breached the tenancy agreement by vacating the rental unit. While I find that the tenancy ended on June 12, 2017, the Tenants were still responsible to pay the rent until the end of the fixed term tenancy, or until the Landlord found a new Tenant.

I find that the Landlord attempted to minimize the loss, by advertising the rental unit; however, I find that the Landlord's testimony is internally inconsistent with the Landlord's documentary evidence. The Tenant raised a concern that the Landlord was not making an effort to re-rent the unit and that he observed that the rental unit was being renovated. The Landlord testified "we did not renovate".

I note that the Landlord's testimony is inconsistent with his documentary evidence. On August 1, 2017, the listing of the Landlords advertisement changed from Best Location Spacious Half-duplex to a listing of "Renovated half duplex". I have considered the Landlord's testimony in response to the Tenants submission regarding renovation. The Landlord did not state that the unit was renovated but the renovations did not affect the ability to rent the unit; the Landlord stated "we did not renovate."

I have also considered that the Landlord attempted to rent the unit at a higher monthly rent for May and June 2017, before reducing the rent in July 2017. I find that the Landlords attempts to rent the unit out at a higher rent, may have contributed to the delay in re-renting the unit.

After considering the Tenant's testimony on this issue and the Landlord's documentary evidence, I do not accept the Landlord's evidence that they took reasonable steps to mitigate against the loss of rent.

I find it reasonable to grant the Landlord compensation for a loss of rent for the month of July 2017. The Landlord's request for compensation for a loss of rent for August 2017, and September 2017, are dismissed.

I grant the Landlord compensation for a loss of July 2017, rent in the amount of \$2,875.00.

Lease Break Fees

The Landlord is also seeking compensation in the amount of \$2,237.50 for the cost of advertising and showing the unit to potential Tenants. Included in the amount claimed is a commission of \$1,437.50 paid to the agent for finding a new tenant.

I find that the tenancy agreement does not contain a term that the Tenants agreed to pay a liquidated damages fee for the effort and cost to show and advertise the unit if the lease is broken. The tenancy agreement indicates that the Tenants must move out of the unit at the end of the fixed term tenancy.

The Landlord's invoices do not break down costs associated with advertising the rental unit on websites. I find that the claim to recover the commission of half a month rent from the Tenant amounts to a penalty and is not a genuine cost of re-renting the unit.

In addition, because I have found that the Landlord failed to take reasonable steps to mitigate against the loss of rent, I find that the costs associated with the efforts to re-rent the unit must also be reduced. I am also mindful that the Landlord would have incurred costs to advertise and show the rental unit at the end of the fixed term tenancy.

I grant the Landlord \$190.00 for the costs associated with re-renting the unit which is the amount being claimed for July 2017.

Utilities

The Condition Inspection Report indicates the Tenants agreed that the Landlord could retain \$28.45 for a gas cost.

I grant the Landlord the amount of \$28.45.

Tenants' Claims

July Rent Overpayment

I find that there was no mutual agreement to end the tenancy and the Tenants did not end the tenancy in accordance with the requirements for a breach of a material term of the tenancy.

The Tenants moved out before the end of the fixed term tenancy and are responsible to pay the rent. I find that the Tenants were responsible to pay the entire rent for June 2017.

The Tenants claim for \$1,725.00 due to an over payment of June 2017, rent is dismissed.

Hydro Bill

I find that electricity and heat were not included in the rent. The Tenants knew they would have to pay for hydro costs. I find that the tenancy agreement is silent that the hydro costs were to be shared with the Tenant in the lower unit.

I find that the parties entered into a discussion and reached an agreement to share the hydro costs on a 65% to 35% basis. I find that this agreement was crystalized when the parties agreed that the Landlord would send the 35% portion to the Tenant using electronic transfer.

During the hearing the Landlord testified that they would agree to split the hydro cost on a 50/50 basis.

I find that the Tenants are responsible to pay the amount of \$264.44 which is 50% of the \$528.88 hydro bill. Since the hydro bill is in the Tenants name and the Landlord has agreed to pay half, I find that the Landlord owes the Tenant \$264.44 for hydro.

NSF Fee and Loss of Wages

The Tenants' claims to recover the cost of the NSF fee and for lost wages are dismissed. The tenancy did not end by mutual agreement. The Tenants were responsible to pay the rent owing under the lease until the Landlord found a new tenant. The Landlord did not breach the Act by attempting to cash the rent cheque.

Security Deposit

The Landlord applied for dispute resolution on January 5, 2017, which was within 15 days of the Tenant moving out and providing a written forwarding address. As such, the doubling of the security deposit provision of section 38 of the Act does not apply.

Monetary Awards

The Tenants are awarded \$264.44 for the Landlords portion of a hydro bill.

The Landlord has established a monetary claim of \$3,093.45 comprised of a loss of rent for July 2017, costs for re-renting the unit, and a utility cost.

As to the recovery of the filing fees the parties paid for the Applications for dispute resolution, I find both parties had some success with their applications, and therefore I do not award compensation for the filing fees.

After applying the security deposit of \$1,437.50 and Tenants award of \$264.44 towards the Landlord's claim of \$3,093.45, I grant the Landlord a monetary order in the amount of \$1,391.51. This monetary order must be served on the Tenants and may be enforced in Provincial Court.

Conclusion

The Tenant failed to end the fixed term tenancy in accordance with the *Act* and tenancy agreement.

I find that the Tenant owes the Landlord \$2,875.00 for a loss of rent; \$190.00 for costs to re-rent the unit; and \$28.45 for a utility gas cost.

I find that the Landlord owes the Tenants \$264.44 for the Landlords portion of a hydro bill.

After setting off the amounts of the awards, I grant the Landlord a monetary order in the amount of \$1,391.51.

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: January 09, 2018

Residential Tenancy Branch