



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FF MNR MNDC MNSD

Introduction

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

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for unpaid rent, money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord's agent, ST ('landlord'), attended the hearing by way of conference call, the tenants did not. I waited until 2:12 p.m. to enable the tenants to participate in this scheduled hearing for 2:00 p.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agent testified that the tenants were served with the landlord's application for dispute resolution hearing package ('Application') and evidence on September 24, 2017, by way of registered mail to the forwarding address provided by the tenants. The landlord provided Canada Post tracking numbers in their evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application and evidence on September 29, 2017, five days after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and losses?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The landlord's agent testified regarding the following facts. This fixed-term tenancy began on June 7, 2017 and was to end on July 31, 2017. Monthly rent was set at \$1,400.00, and the landlord collected a security deposit of \$997.50, which the landlord still holds. A copy of the tenancy agreement was included in the landlord's evidence.

The tenants moved out one month early, on June 30, 2017. The landlord mitigated their losses, and was able to find a new tenant to fill the vacancy for July 7, 2017. The suite was re-rented for \$1,250.00 per month.

The landlord submitted a monetary claim for \$526.10 in order to recover their losses associated with the tenancy as listed below:

Item	Amount
Liquidated Damages as set out in the Tenancy Agreement (pro-rated)	\$140.00
Electrical Bill (pro-rated 6 days)	18.36
Furniture Rental (pro-rated for 6 days)	96.78
Rent (pro-rated for 6 days)	270.96
Total Monetary Order Requested	\$526.10

The landlord testified that the tenants were aware that the tenancy agreement contains a liquidated damages term on the written tenancy agreement which states the following: *"if the tenant breaches a material term of their Agreement that causes the landlord to end the tenancy before the end of the fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay the landlord the sum of \$997 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit".*

The landlord provided undisputed testimony in this hearing that they did their best to mitigate their losses, but suffered a monetary loss due to the tenant's failure to comply

with section 44 of the *Act*, and is requesting a monetary order for these losses as listed above.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The landlord's agent provided undisputed evidence at this hearing that the tenants had moved out before the end of this fixed-term tenancy. I find that the tenants had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to this tenancy. The tenants moved out one month earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord's agent is that the landlord was able to re-rent the suite, and the landlord is only claiming a pro-rated amount of the July 2017 rent as compensation for the loss of July 2017 rent. I am satisfied that the landlord had made an effort to mitigate the tenants' exposure to the landlord's monetary loss of rent for July 2017, as is required by section 7(2) of the *Act*. I, therefore, allow the landlord's claim for a monetary order for rental differential loss in the sum of \$270.96 for the 6 days of lost rental income due to the early termination of this tenancy.

The landlord requested, in their monetary order, to recover the other losses associated with the early end of this tenancy. I find that it is clear that the tenants should be aware that all costs incurred by the landlord in mitigating potential loss in relation to the early termination of this fixed term tenancy would be the responsibility of the tenants, including the amount indicated under Liquidated Damages in the tenancy agreement. I find the pro-rated monetary claim by the landlord to recover these losses to be reasonable. On this basis, I allow the landlord's monetary claim for \$255.14 to recover the losses associated with the early end of this tenancy.

The landlord continues to hold the tenants' security deposit of \$997.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the monetary claim.

As the landlord was successful in their application, I am allowing the landlord to recovery the filing fee from the tenants.

Conclusion

I order the landlord to retain \$626.10 of the tenants' security deposit as set out in the table below in satisfaction of the monetary award for the tenants' failure to comply with sections 44 and 45 of the *Act*, as well as to recover the \$100.00 filing fee for this application.

Item	Amount
Security Deposit Held By Landlord	\$997.50
Less Liquidated Damages as set out in the Tenancy Agreement (pro-rated)	-140.00
Less Electrical Bill (pro-rated 6 days)	-18.36
Less Furniture Rental (pro-rated for 6 days)	-96.78

Less Rent (pro-rated for 6 days)	-270.96
Less Filing Fee	-100.00
Total Monetary Order	\$371.40

The tenants are provided with a Monetary Order for the return of the remaining \$371.40 of the security deposit, and the landlord must be served with a copy of this Order as soon as possible. Should the landlord 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: January 17, 2018

Residential Tenancy Branch