



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding REMAX MANAGEMENT SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNDC, MNR, MNSD

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy?

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

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

Background, Evidence

The landlord's testimony is as follows. The tenancy began on July 1, 2015 and ended on June 30, 2017. The tenants were obligated to pay \$2881.20 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1400.00 security deposit and \$700.00 pet deposit. The landlord testified that the fixed term tenancy came to an end on June 30, 2017. The landlord testified that the tenants did not provide written notice to move out until June 12, 2017. The landlord testified that the short notice was in contravention of the Act and an addendum to their tenancy agreement which required one month's written notice.

The landlord testified that the tenants did not pay the final utility bill that that they were responsible for as per their tenancy agreement. The landlord testified that the tenant did not return the keys to the home at move out resulting in the landlord having to replace the locks and keys as they were unable to lock and secure the home. The landlord testified due to the short notice they were unable to rent the unit for July 1, 2017 and incurred a loss of revenue for that month. The landlord also seeks the liquidated damages clause as per the tenancy agreement.

The landlord is applying for the following:

1.	Lock and key replacement	\$256.20
2.	Utility Bill	147.95
3.	Loss of Revenue July	2881.20
4.	Liquidated Damages	625.00
5.	Filing Fee	100.00
6.		
	Total	\$4010.35

The tenant gave the following testimony. The tenant testified that he disputes the landlords claim in its entirety, save and except for the utility bill. The tenant testified that he needed some long term security and peace of mind and wasn't happy with one year fixed terms. The tenant testified that he moved for his family's security and long term housing.

Analysis

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 arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Lock and key replacement - \$256.20

The landlords testified that none of the keys the tenant left behind worked. The tenant testified that he "thought" he gave the correct keys to the landlord. The landlords provided the move in and move out condition inspection report and the receipt to support his claim. Based on the documentation before me, the testimony of the parties, and on a balance of probabilities, I am satisfied that the landlord is entitled to the \$256.20 as claimed.

Utility Bill - \$147.95

The tenant accepts responsibility for this claim; accordingly I find that the landlord is entitled to \$147.95.

Loss of Revenue - \$2881.20

The landlord testified that the tenant did not provide proper written notice as required by the Act. The tenant acknowledged that he did not provide written notice to the landlord until June 12, 2017 that he would be vacating June 30, 2017. The tenant testified that he began to “sweat” when he and the landlord hadn’t come to terms by early June and made the decision to move out.

Section 45 of the Act addresses this issue as follows:

Tenant's notice

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.

I find that the tenant did not provide proper notice as outlined above. I also find that the landlord made all reasonable efforts to mitigate the loss by attempting to rent the unit out as soon as possible by aggressively advertising and scheduling multiple showings. Based on the above and on a balance of probabilities, I find that the landlord is entitled to \$2881.20.

Liquidated damages – \$625.00

The landlord testified that the tenant breached the agreement and they are entitled to liquidated damages. The tenant fulfilled the term of the tenancy. The liquidated damages clause only reflects if the tenancy ended early, which in this case it did not; accordingly, I dismiss this portion of the landlords’ claim.

The landlord is entitled to the recovery of the \$100.00 filing fee.

Conclusion

In summary, the landlord has been successful in the following claims:

1.	Lock and key replacement	\$256.20
2.	Utility Bill	147.95
3.	Loss of Revenue July	2881.20
4.	Filing Fee	100.00
5.		
6.		
	Total	\$3385.35

The landlord has established a claim for \$3385.35. I order that the landlord retain the \$2100.00 in deposits in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1285.35. This order may be filed in the Small Claims 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 22, 2018

Residential Tenancy Branch