



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MND-L, MNR-L

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; 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. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for loss and damages arising out of this tenancy?

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

Background, Evidence

The landlords' testimony is as follows. The tenancy began on November 20, 2016 and ended on February 20, 2018 although it was scheduled to end on March 20, 2018. The tenants were obligated to pay \$3400.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1700.00 security deposit which has already been addressed in a separate hearing. The landlord testified that the tenants sent him a text

message on January 10, 2018 that they would be moving out on February 20, 2018. The landlord testified that he advised them that they would be responsible for any loss of rent but he would do his best to rent the unit as soon as possible. The landlord testified that about a week later he sent a text message asking the tenants to put their request in writing but they refused to respond to his text messages. The landlord testified that he was unable to rent the unit for the final month of the term and seeks the loss of revenue for February 21, 2018 to March 20, 2018. The landlord also seeks \$5000.00 for the repair to the vinyl covering to the swimming pool in the yard. The landlord testified that the tenants drained the pool and left it uncovered and exposed to the elements causing it to dry out and crack requiring full replacement. The landlord also seeks the recovery of the \$100.00 filing fee for this application.

The landlord is applying for the following:

1.	Loss of Revenue February 21, 2018 – March 20, 2018	\$3400.00
2.	Pool Repair	5000.00
3.	Filing Fee	100.00
4.		
5.		
6.		
	Total	\$8,500.00

The tenants gave the following testimony. The tenants dispute the landlords' entire claim. The tenants testified that they gave the landlord 40 days' notice and that he accepted notice by text message. The tenants testified that the landlord didn't ask for it to be in formal writing until February 9, 2018. The tenants testified that the landlord didn't mitigate as required because he was advertising the home for \$3800.00 per month. The tenants testified that the pool was very old and that they followed the maintenance instructions as provided by the landlord. The tenants testified that the landlord didn't mention anything about the pool until several months after they had been successful in a hearing over the security deposit.

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.

Loss of Revenue – \$3400.00

I find that the landlord and tenant entered into a fixed term tenancy for the period from November 21, 2017 to March 20, 2018.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

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 above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If the tenants do, they could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenants vacated the rental unit on February 20, 2018, before the completion of the fixed term on March 20, 2018. As such, the landlord may be entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I find that the landlord did not attempt to the extent that was reasonable, to re-rent the premises soon after receiving notice of the tenant's intention to vacate the rental unit. The landlord raised the rent sought by an additional \$400.00 per month to \$3800.00. Residential Tenancy Policy Guideline 3 addresses that issue as follows:

*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. **Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation**, nor will placing the property on the market for sale.*

As such, I am not satisfied that the landlord discharged its duty under section 7(2) of the Act to minimize its losses, accordingly; I dismiss this portion of his claim.

Pool - \$5000.00

The landlord testified that written condition inspection reports was not conducted at move in or move out. In addition, the landlord testified that he was unsure of the age of the pool but believed the house to be around 60 years old. As noted above, to be successful in being granted a monetary award under section 67 of the Act, the applicant must satisfy all four factors. It was explained in great detail to the landlord the vital and useful nature of the inspection report. Without the condition inspection report or any other sufficient supporting documentation I am unable to ascertain the changes from the start of tenancy to the end of tenancy, if any. In addition, the landlord has not provided sufficient evidence to show what steps he took to mitigate the loss or sufficient evidence to show the tenants were reckless or negligent and were in contravention of the Act or tenancy agreement. The landlord has not provided sufficient evidence to support this portion of his claim and I therefore dismiss this portion of their application.

The landlord has not been successful in their application.

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

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: November 23, 2018

Residential Tenancy Branch