



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANGARA PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNSD, MNR, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for unpaid rent, loss of income, cost to replace a fob and for the recovery of the filing fee. The landlord also applied to retain the security deposit and a furniture deposit in partial satisfaction of his claim.

The landlord testified that on May 16, 2019, the tenant was served with the notice of hearing and evidence package in person, at her place of work in the presence of witnesses. The landlord provided a witness statement. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent, loss of income, cost to replace a fob and the filing fee?

Background and Evidence

The landlord testified that the tenancy started on July 15, 2018 for a fixed term of 13 months ending on August 31, 2019. The monthly rent was \$1,990.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit and a furniture deposit for a total of \$1,990.00.

The landlord stated that the tenant failed to pay rent for January 2019 and on January 25, 2019; the landlord served the tenant with a ten day notice to end tenancy for unpaid rent, by registered mail. The tenant did not pick up the package and it was returned to the landlord as unclaimed. The tenant did not dispute the notice and did not pay rent. The landlord attempted to contact the tenant by telephone, email and text messages and the tenant did not respond. On February 12, 2019, the landlord visited the rental

unit and when there was no response to his knock, he entered the unit and found that the tenant had moved out.

The landlord advertised the availability of the unit immediately but was unable to find a tenant prior to June 01, 2019. The landlord is claiming unpaid rent for January and February 2019 (\$3,980.00), loss of income for the months of March, April and May 2019 (\$5,970.00), for the cost of replacing the fob (\$150.00) and for the filing fee (\$100.00).

Analysis

Section 45(2) of the *Residential Tenancy Act* states that 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 on which the tenancy is based that rent is payable under the tenancy agreement.

Based on the sworn testimony of the landlord and in the absence of evidence to the contrary, I find that the tenant was in a fixed term tenancy which would end on August 31, 2019. By moving out sometime in February without informing the landlord, the tenant breached the tenancy agreement. 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. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation. In this case, I find that the landlord made attempts to mitigate his losses by advertising the availability of the unit at the same rent, immediately after he found out that the tenant had moved out. Therefore I find that the landlord is entitled to recover any loss of income that he suffered from a breach of the tenancy agreement on the part of the tenant.

I accept the landlord's testimony that the tenant did not pay rent for January and February 2019 and moved out without informing the landlord. Therefore I find that the landlord is entitled to recover unpaid rent for these two months.

I further find that the landlord made efforts to mitigate his losses but was unable to find a tenant until June 01, 2019. Therefore, I find that the landlord is entitled to his claim for the loss of income that he suffered.

The landlord filed proof of having paid \$150.00 to replace the unreturned fob and therefore I find that the landlord is entitled to recover the cost of doing so. Since the landlord has proven his case, he is entitled to the recovery of the filing fee of \$100.00.

Overall, I find that the landlord has established a claim of unpaid rent for January and February 2019 (\$3,980.00), loss of income for the months of March, April and May 2019 (\$5,970.00), for the cost of replacing the fob (\$150.00) and for the filing fee (\$100.00), for a total amount of \$10,200.00.

I order that the landlord retain the deposit of \$1,990.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$8,110.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order of **\$8,210.00**.

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: July 30, 2019

Residential Tenancy Branch