



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on March 16, 2020. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing. One of the Tenants attended the hearing with his friend to help with translation. The Tenant confirmed receipt of the Landlord's application and evidence. The Landlord confirmed receipt of the Tenant's evidence. Neither party took issue with the service of these documents.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to 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.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary order requested?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord stated that the Tenants signed a fixed term tenancy agreement starting on February 18, 2019 and ending February 17, 2020. Monthly rent was \$2,100.00 and rent

was due on the 18th of the month. The Landlord holds a security deposit in the amount of \$1,050.00. A copy of the tenancy agreement was provided into evidence.

The Landlord stated that the Tenants moved out prior to the end of their fixed term tenancy agreement and didn't provide proper notice, nor did they communicate how and when the tenancy would end in a clear manner. The Landlord is seeking to recover lost rent from the time the tenants moved out until the end of the fixed term, plus late rent fees, and the filing fee, totalling \$8,620.00. The Landlord stated that the Tenants never communicated clearly what they were doing, and they only ever mentioned to him generally, that they were going to buy their own house and move out. The Landlord acknowledges finding out about some of the Tenants' plans in August, but stated it was not made clear what they were doing because they continued to pay rent, and park their car in the driveway.

The Landlord stated that the Tenants parked out front until mid-september and paid rent until October 17, 2019. The Landlord stated that after the Tenants failed to pay rent on October 18, 2019, he inquired what was going on, and the Tenants confirmed that they had moved out and weren't going to pay any more. The Landlord stated that the Tenants returned the keys on October 17, 2019.

The Landlord stated that he posted the ad the following day, on October 18, 2019, on a couple of different websites for the same monthly amount. The Landlord stated that they have only had around 10 email enquiries since posting it, as of the time of this hearing, which is almost 5 months later. The Landlord confirmed that the rental unit is still listed for the same price. The Landlord stated he has only shown it to around 3 people since it was listed.

The Landlord pointed to the text messages he provided into evidence. The text messages are written in what appear to be Chinese, and have been translated by an unknown party in the margins of the document. The parties acknowledge that they had some conversations about what to do with the security deposit, given the Tenants broke their lease. However, the parties also acknowledge that they never formally agreed or signed a written document to formalize anything. The Landlord pointed to these text messages as evidence that he had the Tenant's permission to keep the security deposit.

The Tenant also provided copies of text messages in Chinese which were translated by his friend. The Tenant stated that his friend is not a certified translator, but feels it is close to the real meaning of the texts. The Landlord stated that the texts are not at all

accurate. The Landlord stated that the Tenant never made any of their actions or intentions very clear due to language barriers.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

First, I turn to the issue regarding the security deposit. I note the parties had discussions towards the end of the tenancy as to what to do with the deposit. However, I note that there is nothing in writing between the parties to confirm what had been agreed to.

I note section 38(4) states as follows:

A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant,

I note that both parties have uploaded their own copies of text messages, without official translations done by a certified professional. There appears to be some disagreement with respect to the accuracy of some of the translations. Without proper translations, done by an independent third party professional, it is difficult to know how accurate the translations are. As such, I find the text messages, and translations, provided by both parties are not reliable and I have placed no weight on them.

I find there is insufficient evidence that the parties came to an agreement, in writing, with regards to what to do with the security deposit. I note the Landlord has applied to retain this deposit to offset the rental losses, and this will be addressed further below.

I note the Landlord is seeking to recover rent from October 18, 2019, until February 17, 2020, which is the last 4 months of the fixed term tenancy agreement, plus the late rent fees.

I note the following relevant portions of the *Policy Guideline #5 – Duty to Minimize Loss*:

This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

[...]

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.

[...]

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

I note the Landlord has still not found a new tenant, despite the fact that he knew, with certainty, that the Tenants had left, on October 17, 2019. I accept that the rental market may have softened over the last few months in the material area, and this may have impacted the ability of the Landlord to re-rent the unit. However, I also note that the Tenants were under a fixed term tenancy agreement until February 17, 2020, and were not in a position to legally end the tenancy early without repercussion.

I find the Tenants breached section 45(2) of the Act as well as the tenancy agreement when they vacated the unit early and returned the keys on October 17, 2019. I find the Tenants' communication regarding the end of the tenancy lacked clarity and contributed to the Landlord's difficulties in finding someone to re-rent the unit in a timely manner. The Tenants could have been more clear with how and when they would end the tenancy, and when they would vacate. I find the Landlord is entitled to compensation

due to the Tenant's breach of the tenancy agreement and the Act. However, I find the Landlord should have done more to mitigate the loss.

Although the Landlord re-posted the ad quickly, and on more than one website, I find the Landlord waited way too long to reduce the rent in order to attract a new renter, and in doing so, he contributed to difficulties in re-renting. I note the Landlord has only had minimal interest in the rental unit, and only had around 3 showing of the unit over 4-5 months. I find it is unreasonable to keep rent at the same amount, despite the lack of interest. It is unclear what further actions the Landlord took, beyond simply posting the ad several months ago, to try to attract new renters. I find the Landlord's inaction regarding price adjustments exacerbated their losses. Since the Landlord failed to effectively mitigate his lost rent, I decline to award him the full amount of his claim. I find a more reasonable amount is 50% of the rent over the material time. I award the Landlord \$4,200.00 for this item. I decline to award the late rent fees.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with his application, I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

Item	Amount
Lost Rent	\$4,200.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$4,300.00
LESS: Security Deposit	\$1,050.00
Total Amount	\$3,250.00

Conclusion

The Landlord is granted a monetary order in the amount of **\$3,250.00**, as specified above. This order must be served on the Tenants. If the Tenants fail to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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*.

March 17, 2020

Residential Tenancy Branch