



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATTU HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL- FFL, MNSD, MNDCT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the *Act*.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that each were served with the others notice of hearing package and the submitted documentary evidence. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per sections 88 and 89 of the *Act*.

At the outset, both parties confirmed that the \$2,750.00 security deposit was addressed in the previous decision dated July 16, 2020 and offset against the landlord's monetary claim. On that basis, the tenant's request for return of the security deposit was withdrawn by the tenant. The tenant's application shall proceed on the amount of \$6,054.43.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation and recovery of the filing fee?

Is the tenant entitled to a monetary order for money owed or compensation?

Background and Evidence

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

Both parties confirmed in their direct testimony that this tenancy originally began on September 1, 2016 and that a new tenancy agreement was entered into on September 1, 2019 with a fixed term tenancy ending on August 31, 2020. The monthly rent was \$5,863.00 and a security deposit of \$2,750.00 was paid.

The landlord seeks a monetary claim of \$7,315.00 for loss of rental income which consists of:

\$5,863.00	Loss of Rent, April 2020
\$363.00	Loss of Rent, May 2020, difference with new tenant
\$363.00	Loss of Rent, June 2020, difference with new tenant
\$363.00	Loss of Rent, July 2020, difference with new tenant
\$363.00	Loss of Rent, August 2020, difference with new tenant

The landlord claims that the tenant pre-maturely ended the tenancy on February 29, 2020 instead of the fixed term ending on August 31, 2020. The landlord stated that in a previous dispute resolution hearing decision dated July 16, 2020 the landlord was authorized to retain the security deposit against a monetary order for unpaid rent for March 2020. The landlord stated that the unit was immediately advertised for rent, but the landlord was not successful in locating a new tenant until May 1, 2020 at a reduced rent by \$363.00 per month. The landlord seeks compensation for the loss of rent for May 2020 and the difference in rent rates for the remaining 4 months of the fixed term tenancy.

The tenant disputes this claim arguing that the landlord advertised the rental unit for \$6,500.00 per month at the outset; the landlord listed the property for sale; the landlord

had the entire interior of the property painted as well as performed major maintenance to the entire house which includes interior painting and carpet repair. The tenant argues that these things caused a delay in the landlord re-renting the property and as such, the tenant should not be responsible for the additional months rent.

The landlord argued that no maintenance was done to the house other than interior painting to the garage which would not impact the rental of the property. The landlord argued that although the property was listed for sale this would not impact the rental process as well. The landlord argued that this was the start of the state of emergency and as such the status of the property was undecided. The landlord stated that the rental was immediately advertised for rent at \$6,500.00 for a three week period; later lowered to \$6,000.00 for another three week period; then finally lowered again to \$5,500.00 which was then successfully re-rented for May 1, 2020.

The tenant seeks a clarified monetary claim of \$6,054.43 which consists of:

\$585.40	Recovery of garburator removal/replacement cost
\$1,192.38	Recovery of dishwasher replacement cost
\$184.80	Recovery of dishwasher removal/replacement cost
\$3,753.75	Recovery of light replacement cost
\$338.10	Recovery of garage door repair cost

The tenant claims that the landlord has failed to reimburse the tenant for costs relating to repairs/replacement of the above noted items. The tenant stated that he replaced a garburator for \$585.40 and a dishwasher for \$1,192.38 and \$184.80 (for removal/installation costs) as they were broken. The tenant submitted a copy of an invoice dated May 4, 2018 for the garburator and a dishwasher invoice dated June 21, 2017. The tenant stated that the landlord was notified of the damaged appliances requiring replacement.

Both parties agreed that as part of the signed tenancy agreement the tenant was responsible for maintaining the entire rental property at the tenant's cost. The tenant stated that the dishwasher was broken. The landlord argued that the tenant failed to notify the landlord of any appliance issues when they occurred. The landlord stated that the tenant notified the landlord approximately 6 weeks after the dishwasher was replaced. The landlord argued that the tenant did not give the landlord an opportunity to repair/replace the appliances by allowing the landlord to inspect them. The landlord stated at that time the tenant was informed that they would not be reimbursing the

tenant for the appliances as the tenant failed to provide any evidence of the damaged appliances.

The tenant also seeks \$3,753.75 for the cost of replacing lights in the property. The tenant argued that the lights were “flickering” and this was reported to the landlord to be repaired. The landlord disputed this claim arguing that a review of the tenant’s invoice for light replacement is dated September 8, 2016, one day after the tenancy began on September 7, 2016. The landlord argues that the condition inspection report for the move-in was completed on September 7, 2016 where no issues were noted. The landlord further argued that the tenant did not notify the landlord of any light issues and purchased new lights having them installed within 24 hours of taking possession of the rental unit the next day. The landlord argued that this was a case of the tenant replacing the lights for esthetic reasons as there were no issues with the lights.

The tenant seeks recovery of \$338.10 for the cost of repairing the garage door. The tenant stated that an issue on May 31, 2017 where there was an issue with the chain. The tenant stated that the landlord was notified but was unable to state when. The landlord argued that no such notification took place.

Analysis

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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case both parties confirmed that the tenant pre-maturely ended the fixed term tenancy on February 29, 2020. The landlord has provided undisputed testimony that he immediately advertised the rental unit for \$6,500.00 for a period of 3 weeks; which was lowered to \$6,000.00 for a period of 3 weeks; then finally being lowered to \$5,500.00 before successfully being re-rented for May 1, 2020.

Residential Tenancy Branch Policy Guideline #3, Claims for Rent and Damages for Loss of Rent states in part,

This guideline deals with situations where a landlord seeks to hold a tenant liable for loss of rent after the end of a tenancy agreement.

Section 44 of the *Residential Tenancy Act* and section 37 of the *Manufactured Home Park Tenancy Act* set out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provision, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options. These are:

1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment;
2. Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.

...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. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

For example, a tenant has agreed to rent premises for a fixed term of 12 months at rent of \$1000.00 per month abandons the premises in the middle of the second month, not paying rent for that month. The landlord is able to re-rent the premises from the first of the next month but only at \$50.00 per month less. The landlord would be able to recover the unpaid rent for the month the premises were abandoned and the \$50.00 difference over the remaining 10 months of the original term...

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...

[reproduced as written with emphasis]

In this case, the landlord immediately advertising the unit for rent. However, the landlord instead of advertising it for rent at the same rate of \$5,863.00 per month chose to list it at higher rate of \$6,500.00 for a 3 week period before lowering it to \$6,000.00 for another 3 week period before finally lowering it to \$5,500.00 where it was successfully re-rented. I find that in this case that the landlord failed to mitigate any

possible losses and caused a delay of approximately 6 weeks before successfully re-renting the property. As such, I find that the landlord has failed to establish a claim for loss of rent for April 2020 and the subsequent difference in rent for the remaining 4 months. The landlord's monetary claim is dismissed without leave to reapply.

In the tenant's claims for compensation for recovery of costs totalling \$6,054.43 for replacement of a garburator; dishwasher; lights and garage door, I find that the tenant has failed. Despite both parties confirming that a term of the signed tenancy agreement provides for the tenant to assume all costs maintaining the rental property which includes the appliances, the tenant has failed to provide sufficient evidence that each of the items sought was damaged through no act or negligence of the tenant. Further the tenant has failed to provide sufficient evidence that on each occasion the landlord was notified of the issue and given an opportunity to inspect and if necessary repair/replace the item. The landlord has disputed that no notice was given by the tenant regarding these items until after the items were replaced by the tenant. On this basis, the tenant's application is dismissed without leave to reapply.

I note for the record that Residential Tenancy Branch Policy Guideline #1, Landlord & Tenant- Responsibility for Residential Premises, Major Appliances #3 states in part,

...Residential Tenancy Agreements must not include terms that contradict the Legislation. **For example, the tenant cannot be required as a condition of tenancy to paint the premises or to maintain and repair appliances provided by the landlord.**

Such a term of the tenancy agreement would not be enforceable....

[reproduced as written with emphasis]

...The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant...

[reproduced as written with emphasis]

Conclusion

The landlord's application is dismissed.

The tenant's application is dismissed.

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: October 23, 2020