



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, cost of advertising, cost of utilities and for the recovery of the filing fee.

This matter was initially heard on August 05, 2015. The tenant did not attend the hearing. The Arbitrator was unable to determine that the tenant had been served with the notice of hearing because the landlord had sent the package to an address that the tenant had provided at the start of tenancy and because the landlord did not file a tracking number into evidence, for that hearing.

The landlord testified that residents of that city have a post box number which remains the same irrespective of where a person resides. Mail is not delivered to home addresses. The landlord provided a tracking number for the notice of hearing package that was sent to the tenant's post box for the prior hearing and it was received and signed for by the tenant.

The landlord testified that on March 03, 2016, he used the same address to serve the tenant with the notice of this hearing and provided copies of the tracking slips. The landlord served each tenant separately. The packages were returned marked "unclaimed" and "refused" respectively.

Based on the testimony of the landlord and the online tracking carried out by myself, I find that the landlord has mailed the hearing packages to the post box that the tenant receives mail at.

Residential Tenancy Policy Guideline No. 12 provides that, where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Based on the tenant's evidence and pursuant to section 89 and 90 of the *Act*, I find that the tenant has been deemed served with the landlord's dispute resolution hearing package on September 08, 2015, 5 days after the mailing of the package. 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 loss of income, cost of advertising, utilities and for the recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy started on August 26, 2014 for a fixed term of one year. The monthly rent was \$1,625.00 payable on the first of each month. On January 31, 2015, the tenant gave the landlord written notice to end the tenancy effective February 28, 2015 and moved out on that day. The landlord stated that the tenant used his security deposit towards rent for the month of February 2015.

The landlord made efforts to find a tenant by advertising on popular websites and in the local newspaper. The landlord filed copies of the advertisements and the payments made in the total amount of \$269.03 for advertisements that ran from March to August 2015. The landlord stated that he even lowered the rent from \$1,625.00 to \$1,000.00 and is still unable to find a tenant. The landlord testified that despite his efforts, as of this date – March 03, 2016, he has not found a tenant for the rental unit.

The landlord is also claiming a total of \$345.19 for the cost of utilities for the period of March to July 2015, \$852.00 for the cost of insurance and \$9,750.00 for loss of income for the remainder of the tenancy

The landlord is claiming the following:

1.	Advertising	\$269.02
2.	Utilities	\$345.19
3.	Insurance	\$852.00
4.	Loss of income	\$9,750.00
5.	Filing fee	\$100.00
	Total	\$11,316.21

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 undisputed testimony and documentary evidence of the landlord, I find that by moving out on February 28, 2015, the tenant moved out prior to the end date of the fixed term (August 31, 2015) and therefore was not in compliance with the terms of the fixed term tenancy agreement, which resulted in a loss of income to the landlord.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

The landlord has proven that he mitigated his losses by advertising the vacancy, by actively looking for a tenant and by reducing the rent. However, despite the landlord's efforts to mitigate his losses, as of the date of this hearing which is more than one year after the tenant moved out, the rental unit remains vacant. This leads me to believe that there may be other factors that are contributing to the landlord's inability to find a tenant.

Ordinarily a tenant is responsible for the loss of income suffered by the landlord due to the tenant's non-compliance with the tenancy agreement. In this case however, since the rental unit is still vacant one year after the tenant moved out, I find that that other factors maybe in play and accordingly I find that the tenant is not responsible for the entire loss of income suffered by the landlord for the period of the fixed term.

Based on my determination, I award the landlord a portion of his claim for advertising, utilities and loss of income. I find that the landlord is not entitled to the cost of insurance as it is the landlord's responsibility to protect his property at his own expense.

I must now determine the amount of the award to the landlord. In determining the amount of the award I take into consideration that the tenant was in a fixed term lease which he did not comply with and I also take into consideration the reasons for the degree of difficulty the landlord faced in finding a new tenant.

The landlord explained that due to the downturn in the economy, jobs were lost and people moved out of the city in search of employment and therefore he has not been successful in finding a tenant.

I find that the tenant gave notice on January 31, 2015 and moved out on February 28, 2015. The landlord was put on notice in January and was unable to find a replacement tenant due to the reasons explained above.

Since there are other factors that contribute to the prolonged vacancy of the rental unit which the tenant cannot be held responsible for, I find it appropriate to award the landlord the cost of advertising, utilities and the loss of income for only the first two months, after the tenant moved out. Since the landlord has proven a portion of his claim, I award him the recovery of the filing fee.

Overall the landlord has established the following claim:

1.	Advertising	\$52.90
2.	Utilities	\$223.44
3.	Insurance	\$0.00
4.	Loss of income	\$3,250.00
5.	Filing fee	\$100.00
	Total	\$3,626.34

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount due of \$3,626.34. 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 **\$3,626.34**.

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: March 03, 2016

Residential Tenancy Branch

