



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1 OAK PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 19, 2017. The landlord's agent (the landlord) provided undisputed affirmed testimony that an online search shows that the tenant signed in receipt of the package on January 25, 2017. The tenant confirmed that no documentary evidence was submitted by him. Neither party raised any service issues. As both parties have attended and confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

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 applicant's claim and my findings are set out below.

Both parties confirmed that this tenancy began on March 1, 2016 on a fixed term tenancy ending on February 28, 2017. The monthly rent was \$950.00 payable on the 1st day of each month and that a security deposit of \$475.00 was paid.

The landlord seeks a monetary claim of \$2,002.00 which consists of:

\$42.68	Advertising Cost
\$71.14	Advertising Cost
\$21.69	Unpaid Utilities, (October-November 2016)
\$126.00	Carpet Cleaning Cost
\$950.00	Unpaid Rent, November 2016
\$950.00	Unpaid Rent, December 2016
\$40.00	NSF Fee, November and December 2016
\$275.80	Pro-rated rent, January 2016

The landlord clarified that this amount includes the deduction of a \$475.00 security deposit currently held. As such, I amend the landlord's monetary claim to \$2,477.00.

Both parties confirmed that the tenant gave pre-mature notice to end the tenancy on August 25, 2016 for September 29, 2016. The landlord stated that she immediately began to advertise the rental unit online and through social media, but due to a "soft" market was unsuccessful in re-renting the unit until January 10, 2016. The landlord also stated that she attempted to re-rent the premises at a reduced rate of \$850.00 per month without success. In support of this claim the landlord has provided copies of:

Advertising Invoices, November 10, 2016 and December 6, 2016
Utility Invoice for \$21.69, dated November 24, 2016
Steam Cleaning Invoice \$126.00, dated September 30, 2016
Incomplete tenancy agreement, dated February 18, 2016
Unsigned and Undated Addendum page
Completed Condition Inspection Report, Move-Out dated September 29, 2016

The tenant disputed the landlord's claim, but during the course of the hearing agreed to the following:

\$42.68	Advertising
\$71.14	Advertising
\$126.00	Steam Cleaning Carpet
\$239.82	Total

As the tenant has conceded the above noted claims the landlord has established the monetary claim for \$239.82.

The tenant stated that the landlord has only provided evidence of advertising for November and December and argues that the landlord did not attempt to advertise the rental unit until November 2016 based upon the submitted advertising invoices. As such, the tenant also argues that since he vacated the rental unit on September 29, 2016 that he should not be responsible for the Utilities for October-November as claimed by the landlord. The tenant also argued that he should not be responsible for the NSF charges as his tenancy had ended on September 20, 2016.

The landlord re-iterated that she had advertised using three different online platforms is was not able to provide any proof of mitigation (advertising) until she used the local news print service as shown by the submitted invoices. The landlord also claims that as the tenant was still responsible for the tenancy until a new tenant was found that utility costs should be the responsibility of the tenant. The landlord provided undisputed affirmed testimony that the tenant had already agreed to pay for October 2016 rent through the agreed upon "CAP" preapproved payment system. The landlord clarified that at no time has the landlord received the required 30 day notice to cancel this function and in fact the landlord contacted the tenant on November 7, 2017 asking why the pre-approved payment was returned as NSF. The landlord stated that on November 7, 2017 the landlord immediately requested that the "CAP" preapproved payments be cancelled, but was not within the allowed 30 day period.

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.

The tenant has conceded the following items of claim made by the landlord.

\$42.68	Advertising
\$71.14	Advertising
\$126.00	Steam Cleaning Carpet
\$239.82	Total

Policy Guideline #5, Duty to Minimize states in part,

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. 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.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. ... Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

I accept the affirmed testimony of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The landlord has provided consistent and concise direct testimony that the tenant had provided pre-mature notice to end the tenancy on August 25, 2016 and that the landlord had made all reasonable efforts to re-rent the rental through online and social media sites. Although the landlord failed to provide any supporting evidence of this, I find that this is consistent with the remaining portions of the landlord's claims that newsprint advertising began for November and December 2016 as shown by the submitted advertising invoices. I also accept the landlord's claim that the tenant was still responsible for utility costs for October –November 2016 even though he had vacated on September 29, 2016. As such, I find that the landlord has established claim for the loss of rental income for November 2016-January 2016 as claimed. I also make the finding that the landlord has provided sufficient evidence that the tenant was responsible for the utility costs and the

NSF charges incurred as the tenant failed to provide the proper and agreed upon 30 day notice to cancel.

On this base, I find that the landlord has established a claim for the following amounts:

\$21.69	Unpaid Utilities, (October-November 2016)
\$950.00	Unpaid Rent, November 2016
\$950.00	Unpaid Rent, December 2016
\$40.00	NSF Fee, November and December 2016
\$275.80	Pro-rated rent, January 2016
\$2,238.18	Total

The landlord is entitled to a total monetary claim of \$2,477.00.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

I authorize the landlord to retain the \$475.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$2,102.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and 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*.

Dated: July 05, 2017

Residential Tenancy Branch