



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDC, MNR, 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 tenants' 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 tenants pursuant to section 72.

The landlord's agents (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlord provided undisputed affirmed evidence that both tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on January 26, 2017. The landlord provided the Canada Post Customer Receipt Tracking numbers for both packages in their direct testimony (which is reflected on the coversheet of this decision). I accept the undisputed affirmed evidence of the landlord and find that the tenants were 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?

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.

This tenancy began on October 1, 2016 on a fixed term tenancy ending on September 30, 2017 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$1,395.00 payable on the 1st day of each month. A security deposit of \$697.50 was paid on September 28, 2016.

The landlord seeks a monetary claim of \$1,395.00 which consists of:

\$697.50	Loss of Rental Income, January 1-15, 2017(Pro-rated)
\$805.33	Liquidated Damages, Tenant ended tenancy prematurely
(-\$108.83)	Tenants made a partial payment towards liquidated damages
\$1,395.00	Total Claim

I note in adding these amounts that the landlord's claim amount is in error and should be corrected to \$1,394.00.

The landlord provided undisputed affirmed evidence that the tenants gave notice to end the tenancy on December 21, 2016 for December 27, 2016 as shown in the submitted copy of the "Resident Notice To Vacate" form dated December 21, 2016. The landlord stated that as soon as notice was received the rental unit was advertised online to be re-rented, but that a new tenant was not obtained until January 15, 2017. The landlord seeks the recovery of lost rental income of \$697.50 (pro-rated) for the period of January 1-15.

The landlord also seeks compensation through liquidated damages of \$805.33 as per condition #5 as the tenant pre-maturely ended the fixed term tenancy on December 27, 2016 as opposed to the agreed upon date of September 30, 2017. The liquidated damages clause states,

If the tenant end the fixed term tenancy, or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term as set out in B above, or any subsequent fixed term, the tenant will pay to the landlord the sum of \$805.33 as liquidated damages and not as a penalty. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the rental unit and must be paid in addition to

any other amounts owed by the tenant, such as unpaid rent or damage to the rental unit or residential property.[Reproduced as written]

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, I accept the undisputed affirmed evidence of the landlord and find that the tenant did breach the fixed term tenancy by ending it prematurely on December 27, 2016 as opposed to the agreed upon date of September 30, 2017.

Residential Tenancy Branch, Policy Guideline #5, Duty to Minimize Losses 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 loss.

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.

I accept the undisputed affirmed testimony that the landlord made reasonable efforts to minimize any possible losses by immediately advertising the rental premises for rent. The landlord was not successful in re-renting the premises until January 15, 2016 and as such, the tenant is responsible for the tenancy until January 15, 2017 when the landlord was able to find a new tenant. As such, the landlord has established a claim for the loss of rental income of \$697.50 as claimed by the landlord.

On the landlord's claim for liquidated damages, I accept the undisputed affirmed evidence of the landlord that the \$805.33 is an agreed upon sum of a pre-estimate for the cost of the landlord to re-rent the premises. The landlord has provided a copy of the

signed agreement for liquidated damages which the tenant has acknowledged with her initials as part of the signed tenancy agreement. As such, I find that the landlord is entitled to this claim of \$805.33.

The landlord has established a total monetary claim of \$1,502.83. This claim is adjusted to reflect the partial payment of \$108.83 paid by the tenant. I also find that the landlord having been successful is entitled to recovery of the \$100.00 filing fee.

I authorize the landlord to retain the \$697.50 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$796.50.

This order must be served upon the tenants. Should the tenants 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 07, 2017

Residential Tenancy Branch