



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

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

- a Monetary Order for damages or losses arising out this tenancy pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenants and landlord, V.J.W., (the "landlord") attended the hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The tenants acknowledged that they received a copy of the landlords' Application for Dispute Resolution and evidentiary package sent by Canada Post Registered Mail on December 30, 2017. Pursuant to section 89 the *Act*, the tenants are found to have been served with these documents.

The tenants testified that further evidence was given to them in person by landlord J.A.W., on June 22, 2017. On June 28, 2017 the tenants submitted evidence to the *Residential Tenancy Branch*.

Rule of Procedure 3.17 states that:

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC office in accordance with the *Act* or Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late

evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

I find that as neither party is prejudiced by this late evidence, that I will accept the tenants' late evidence.

Issue(s) to be Decided

Are the landlords entitled to retain the Security Deposit?

Are the landlords entitled to a monetary award for unpaid rent and for damage arising out of this tenancy?

Can the landlords recover the filing fee from the tenants?

Background and Evidence

Testimony provided by the landlord explained that this was a fixed-term tenancy that was set to run from November 1, 2016 to April 30, 2017. Rent was \$2,200.00 per month and a security deposit of \$1,100.00 continues to be held by the landlords.

The landlord explained that she was seeking a Monetary Order of \$4,836.00 in satisfaction for the tenants having broken their fixed term tenancy agreement. Both parties confirmed that the tenants gave notice on December 20, 2016 of the tenants' intention to vacate the rental unit at the end of December 2016. The landlord stated that due to this late notice, she was unable to rent the apartment and eventually decided to move herself and her children into the rental unit in March 2017. The landlord said that the Monetary Order she sought was in reflection of rent for January and February 2017, along with \$400.00 to cover the loss in the difference of rental income for the remaining two months of the lease and \$36.00 to cover the costs of advertising the home online.

Specifically the landlord sought:

Items	Amount
Loss of January & February Rent (2 x \$2,200)	\$4,400.00
2 months' reduced rent @ \$200.00 due to market rate over winter period	400.00
Advertisements	36.00
Total =	\$4,836.00

The tenants agreed with the timelines provided by the landlord; however, they disputed that any money was owed as a result of the tenancy. The tenants questioned the safety of the home, explaining they felt the home was unfit for habitation and stated that they suspected a carbon monoxide leak was present in the home. The tenants argued that their contract with the landlord should be rendered void due to the poor quality of the home and because of an alleged incident involving the landlord and her family sleeping in the rental home in November 2016 as the tenants took possession of the rental unit. The landlord strongly denied this allegation.

In addition to a Monetary Order for damage and loss suffered as a result of the tenancy, the landlord is seeking to keep all or part of the security deposit as relief against unpaid rent. Both parties explained that no condition inspection report was performed on the premises at the beginning or conclusion of the tenancy. The tenants provided their forwarding address to the landlord on December 24, 2016. Following receipt of this address, on December 29, 2016 the landlord applied for dispute resolution.

Analysis

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.” This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.” In this case, written notice was provided to the landlord on December 20, 2016. The landlord gave undisputed sworn testimony that upon receipt of this notice she posted two separate online advertisements on December 30, 2016 listing the apartment for rent for immediate occupation. I find that the landlord has made *reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.*

While I appreciate the tenants' argument that they deemed the home uninhabitable and found it to be dangerous, no specific actions were taken on their part to address these matters through the proper legal channels. There exist numerous forms of relief through the *Residential Tenancy Act* for tenants who find themselves in precarious situations. The tenants argued that the tenancy agreement with the landlord should be rendered

void due to perceived violations. Again, specific relief of this type is available to tenants through the *Act*; however, an application must be made on behalf of the party seeking relief. It is not sufficient to break a contract and then ask for it to be made void after the fact. Despite the numerous frustrations with the rental unit identified at the hearing by the tenants, no formal steps were taken by them to seek relief. As a result of their actions in breaking their tenancy agreement, the landlord has suffered a loss.

I find that the landlord has made a *reasonable effort* to re-rent the unit following the abandonment of the property. I find that the landlord's taking immediate steps to place online advertisements upon receipt of the tenant's notice, and paying for a further advertisement following initial unsuccessful efforts to locate a renter to be sufficient grounds for a monetary award. Ultimately, the landlord should not be forced to suffer a loss as a result of a tenant breaking a contract. I therefore award the landlord compensation for unpaid rent for the months of January and February 2017, along with relief for the money she spent on an online advertisement. I am not satisfied that the landlord is entitled to \$400.00 to cover additional loss of rental income for the remaining two months of the tenancy since the unit was never re-rented. The landlord is granted relief for these two months in the form of the monetary award against the tenants for unpaid rent for January and February 2017.

The landlord has also applied to retain the security deposit. Using the off-setting provisions contained in section 72(2) of the *Act* the security, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued to the landlord.

As the landlord was successful in her application, she may recover the \$100.00 filing fee from the tenants pursuant to section 72(1) of the *Act*.

Conclusion

I issue a Monetary Order of \$3,436.00 in favour of the landlord as follows:

Item	Amount
Unpaid Rent for January 2017	\$2,200.00
Unpaid Rent for February 2017	2,200.00
Recovery of Filing Fee	100.00
Recover of Advertisement Fee	36.00
Less Security Deposit	(-1,100.00)
Total =	\$3,436.00

The landlord is provided with a Monetary Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this 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 10, 2017

Residential Tenancy Branch