



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MEICOR PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for money owed or compensation for damage or loss under the Act and an order to retain the security deposit in partial satisfaction of the claim.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on August 15, 2014 a Canada post tracking number was provided as evidence of service. The landlord stated that the Canada post track history indicated that the package was successfully delivered to the tenant on August 22, 2014.

I find that the tenant has been duly served in accordance with the Act.

The landlord appeared gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled monetary order for money owed or compensation for damage or loss under the Act?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord testified that on June 23, 2014, the parties entered into a verbal tenancy agreement, which the tenant agreed to rent the premises commencing on August 1, 2014. The

landlord stated that the agreed upon rent was \$725.00 per month and a security deposit of \$362.50 was paid by the tenant.

The landlord testified that towards the end of July 2014, they attempted to reach the tenant to schedule a move-in condition inspection. However, on July 28, 2014, the tenant informed the landlord that they would not be moving into the rental unit. The landlord stated that the tenants did not provide sufficient notice and as a result they were unable to find a new renter for August 2014.

The landlord testified that they are entitled to recover the full amount of loss rent; however, they only seek a monetary order in the amount of \$362.50 and to keep the security to offset the loss.

The landlord testified they seek to recover their filing fee from the tenant.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 16 of the Act states the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, I accept the undisputed testimony of the landlord that the parties entered into a verbal tenancy agreement with an effective date of August 1, 2014.

Section 45 of the Residential Tenancy Act states:

45 (1) A tenant may end a periodic 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,
and
(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

Although the tenant did not occupy the premises, I find the tenant did not give sufficient notice that they were ending the tenancy as required by section 45 of the Act. In this case the tenant provided notice to the landlord on July 28, 2014. However, the earliest date the tenant could have legally ended the tenancy was August 31, 2014.

As a result of the tenant breaching the Act, the landlord suffered a loss of rent as they were unable to find a new renter for any portion of August 2014. Although the landlord is entitled to recover the full loss of rent the landlord requested a monetary order in the amount of \$362.50. Therefore, I find the landlord is entitled to a monetary order for loss of rent in the amount of **\$362.50**.

I find that the landlord has established a total monetary claim of **\$412.50** comprised of loss of rent and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$362.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$50.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: January 08, 2015

Residential Tenancy Branch

