



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to retain all or a portion of the tenants' security deposit and pet damage deposit (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1454 in order to enable the tenants to connect with this teleconference hearing scheduled for 1430. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenants with the dispute resolution package on 10 April 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. The landlord testified that he received from the tenant DR a forwarding address for the tenants in writing. The landlord testified that this address is for a Salvation Army. The landlord testified that he believes that the tenant DR works there or has some connection to that group. In particular, the landlord testified that the tenants married at that location. On the basis of this evidence, I am satisfied that the tenants were deemed served with the dispute resolution package pursuant to paragraphs 89(1)(d) and 90(a) of the Act.

Preliminary Issue – Landlord's Amendment

The landlord indicated the following in the details of dispute section:

I like to claim \$750.00 for April rent 2015 due to short notice to move out. I was unable to rent it for April 1 2015. I have in hand security deposit and pet deposit. I like to keep it until official tenancy branch hearing.

The landlord has checked the box that indicates he seeks \$750.00 for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67. The landlord asks that I amend his application to remedy this technical deficiency.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution. In determining whether or not to allow an amendment, I must consider the prejudice to the responding party.

In this case, I find that, while the landlord's application is technically deficient, the landlord has sufficiently set out the particulars of his claim in such detail that the tenants ought to have understood that the landlord was seeking the \$750.00 for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67. As such, I allow the amendment as there is no undue prejudice to the tenants in doing so.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss arising out of this tenancy? Is the landlord entitled to retain all or a portion of the deposits in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 June 2013. The parties entered into a written tenancy agreement dated 1 June 2015. Monthly rent for the duration of the tenancy was \$750.00 and was payable on the first. The landlord testified that he continues to hold a security deposit in the amount of \$375.00, which was collected on or about 23 May 2013. The landlord testified that he continues to hold a pet damage deposit in the amount of \$275.00, which was collected after 23 May 2013.

On 19 March 2015, the tenants personally delivered their notice to end tenancy to the landlord. The notice set out an effective date of 31 March 2015. The landlord testified the tenants vacated the rental unit in accordance with this notice.

The landlord testified that he was unable to re-rent the unit for 1 April 2015. The landlord testified that he immediately posted the rental unit for rent on an online classified site and

posted a sign outside the residential property. The landlord testified that he advertised the rental unit as available for 1 April 2015. The landlord testified that he also spoke to the residential manager of one of his other nearby rental properties to assist in securing new tenants. The landlord testified that he secured new tenants for a tenancy beginning 1 May 2015.

Analysis

Subsection 45(1) of the Act sets out that:

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 after the landlord receives the notice, and
- (b) is before the day in the month...that rent is payable under the tenancy agreement.

In accordance with section 45(1) of the Act, the earliest effective date for the tenants' notice delivered on 19 March 2015 was 30 April 2015.

Where there is an incorrect effective date on a notice to end tenancy, section 53 of the Act deems it to be changed, if the effective date stated in the notice is any day other than 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, the effective date is deemed to be 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 that complies with the required notice period. In this case, this means that the effective date is automatically changed to 30 April 2015.

In leaving the tenancy early, the tenants have breached subsection 45(1) of the Act. As such, the tenants are responsible for any losses caused to the landlord by their short notice.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

In this case April's rent loss flows directly from the tenants' breach of subsection 45(1) of the Act. I find, on a balance of probabilities, that the landlord incurred losses in the amount of \$750.00. I find that by advertising the rental unit immediately and as available for 1 April 2015,

the landlord attempted to mitigate his losses. The landlord has proven his entitlement to the full amount of April's rent loss.

The landlord applied to keep the tenants' deposits. There was no evidence tendered in this application that indicates the landlord's right to claim against the deposits is extinguished. I allow the landlord to retain the deposits in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in his application, he is entitled to recover his filing fee from the tenants.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$150.00 under the following terms:

Item	Amount
April Rent Loss	\$750.00
Offset Security Deposit Amount	-375.00
Offset Pet Damage Deposit Amount	-275.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$150.00

The landlord is provided with this 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 subsection 9.1(1) of the Act.

Dated: September 15, 2015

Residential Tenancy Branch

