



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing by conference call and gave undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlord stated that the tenants were served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on April 28, 2015. The landlord has submitted a copy of the Canada Post Customer Receipt as confirmation of service. I accept the landlord's undisputed evidence and find that the tenants were deemed served with the notice of hearing package and the submitted documentary evidence as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for loss of rental income under the Act, regulation or tenancy agreement and for recovery of the filing fee?

Background and Evidence

This tenancy began on April 1, 2015 on a 2 year fixed term tenancy ending on April 30, 2017 as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$2,000.00 payable on the 1st day of each month and security deposit of \$1,000.0 was paid on March 2, 2015.

The landlord stated that he gave possession of the rental premises to the tenants on March 25, 2015 to paint and allow the tenant to move-in early before April 1, 2015. The landlord stated that he discovered that the tenants failed to move on April 6, 2015 as agreed upon in the signed tenancy agreement when the monthly rent cheque was returned by his bank. The landlord stated that the tenants' cheque was returned by his bank that the cheque was "payment stopped" by the tenant. The landlord has submitted a copy of the returned cheque. The landlord stated that he immediately tried to communicate with the tenant, who has refused all communications with him as of the date of this hearing. The landlord stated that the tenant failed to provide any notice that they would not be moving in after signing the agreement. The landlord immediately tried to advertise the rental for the 15th of the month on April 7, 2015, but was not successful. The landlord stated that he was later able to rent the premises for May 1, 2015. The landlord states that he still holds the \$1,000.00 security deposit paid by the tenant.

The landlord seeks a monetary order for \$2,000.00 for the loss of rental income.

Analysis

Residential Tenancy Branch Policy Guideline #5, Duty to Minimize, states

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.

I accept the undisputed affirmed testimony of the landlord and find that the landlord has made reasonable efforts to mitigate any possible losses by immediately re-advertising the rental after finding out on April 6, 2015. The landlord has provided a copy of the returned cheque which was "stopped" by the tenant. I find that the landlord has established a monetary claim of \$2,000.00.

Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the \$1,000.00 security deposit in partial satisfaction of the monetary award.

As the landlord has been successful in his application, I find that the landlord has established an entitlement to recovery of the \$50.00 filing fee.

Conclusion

I grant a monetary order to the landlord for \$1,050.00.

The landlord is provided with this Order in the above terms and the tenants must be served with this Order. Should the tenants 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: October 01, 2015

Residential Tenancy Branch

