



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LI-CAR MANAGEMENT CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein they sought a Monetary Order for unpaid rent, authority to retain the security deposit and recovery of the filing fee.

Only the Landlord, rental property manager, K.H., attended the hearing (for the purposes of this my Decision I will refer to her as the "Landlord"). During the hearing the Landlord was given the opportunity to provide her evidence orally. A summary of their testimony is provided below and includes only that which is relevant to the hearing.

As the Tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The Landlord testified that the Notice of Hearing was served on the Tenant by registered mail on May 8, 2015. Section 90 of the Act provides that documents served in this manner are deemed served five days later. I accept the Landlord's undisputed testimony and find that the Tenant was sufficiently served as of May 13, 2015 under the *Act* as a result.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord testified that the Tenant agreed to rent the rental unit for \$1,800.00 per month. She provided a \$900.00 security deposit, and then decided not to rent the unit

giving the Landlord minimal notice. Introduced in evidence was a "Schedule of Events" prepared by the Landlord. This document indicated as follows:

- The Tenant's application for tenancy was approved on April 2, 2015. The Tenant viewed the rental unit on April 8, 2015. On April 9, 2015 the Tenant provided a cash security deposit in the amount of \$900.00. A move in inspection was scheduled for May 1, 2015.
- On April 21, 2015 the Tenant contacted the Landlord and advised she had a dog. In response, the rental management company attempted to obtain the consent of the owner of the rental unit as prior to that request the owner had prohibited dogs.
- On April 24, 2015 the Tenant contacted the rental management company to schedule a second viewing. At this time she also advised that her boyfriend would be living with her.
- On April 27, 2015 the Tenant advised the rental management company that she no longer wished to rent the rental unit.
- On April 28, 2015 the rental management company advertised the rental unit.

On May 22, 2015 the rental unit was re-rented. The Landlord confirmed that as the monthly rent was \$1,800.00 they were able to recover 10 days of rent at \$58.06 per day such that a total of \$580.65 was recovered for May 2015.

The Landlord sought monetary compensation for the balance of the May rent, namely \$1,219.35, recovery of the \$50.00 filing fee and authority to apply the \$900.00 security deposit to the total awarded.

Analysis

Section 1 of the Act provides as follows:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

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

While it is the case that no written tenancy agreement existed, I find that an oral tenancy was created. The fundamental elements of a binding contract are: offer; acceptance; and, consideration. In this case, the Landlord *offered* the rental unit to the Tenant at a monthly rent of \$1,800.00; the Tenant *accepted* the rental unit; and the Tenant paid the security deposit of \$900.00 to the Landlord. This payment satisfies the final element or *consideration* thereby creating a valid contract.

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 responding party 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.

As the Tenant provided the Landlord with only three days-notice before the beginning of May 2015, it is not surprising the Landlord was not able to rent the rental unit for May 1, 2015. I find that the loss occurred directly as a result of the Tenant's late notice. Fortunately, the Landlord was able to rent the unit as of May 22, 2015; in doing so, I find that the Landlord took adequate steps to mitigate their loss. I find that the Landlord has established that they suffered a \$1,219.35 loss of rental income for May 2015 and they are entitled to be compensated this sum from the Tenant. As the Landlord's claim had merit, I also award recovery of the \$50.00 filing fee.

For the above reasons, I grant the Landlord's claim for \$1,269.35. I Order, pursuant to section 38 of the *Act*, that the Landlord be permitted to retain the security deposit of \$900.00 and I grant the Landlord a Monetary Order for the balance due in the amount of

\$369.35. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

A tenancy agreement existed between the parties. The Tenant's late notice caused the Landlord to lose rental income for the month of May 2015. The Landlord took adequate steps to minimize their loss by renting the unit on May 22, 2015. The Landlord is permitted to retain the \$900.00 security deposit towards the balance of the rent owing and recovery of the filing fee and is granted a Monetary Order for the balance due in the amount of **\$369.35**.

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 26, 2015

Residential Tenancy Branch

