



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNR, MND, MNDC, MNSD, FF

Introduction

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

- an Order of Possession based on a mutual agreement to end tenancy, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 25 minutes. The landlord HK ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord testified that he had authority to represent "landlord RK," the other landlord named in this application, as an agent at this hearing.

The landlord testified that the tenant was served with the landlords' application for dispute resolution hearing package ("Application") on September 3, 2015, by way of registered mail. The landlord said that it was sent to the written forwarding address provided by the tenant on the move-out condition inspection report. The landlords provided a copy of a Canada Post receipt and tracking number with their Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on September 8, 2015, five days after its registered mailing.

The landlord provided a copy of the tenancy agreement and the move-in and move-out condition inspection reports, consisting of ten pages total, after the hearing at my request. The landlord confirmed that he served this evidence on the tenant with the Application package, but I had not received it by facsimile, even though the landlord said he sent it to the Residential Tenancy Branch before this hearing. I received this evidence from the landlord after the hearing and I considered it in my decision.

At the outset of the hearing, the landlord stated that the landlords did not require an order of possession, as the tenant had already vacated the rental unit. The landlord also confirmed that he did not wish to pursue the landlords' claim for damage to the rental unit in the amount of \$300.00 because he did not have receipts to support the claim. Accordingly, these portions of the landlords' Application are dismissed without leave to reapply.

Issues to be Decided

Are the landlords entitled to a monetary award for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this Application from the tenant?

Background and Evidence

The landlord testified that this tenancy began on April 15, 2015 and ended on September 3, 2015. The landlord stated that monthly rent in the amount of \$600.00 was payable on the first day of each month. The landlord confirmed that a security deposit of \$300.00 was paid by the tenant and the landlords continue to retain this deposit. The landlord noted that a pet damage deposit of \$300.00 was paid by the tenant and the landlords returned this deposit on September 3, 2015, by way of a cheque delivered in person, which was cashed by the tenant on September 8, 2015.

The landlord testified that move-in and move-out condition inspection reports were completed for this tenancy. The landlord explained that a written forwarding address was provided by the tenant on September 3, 2015, on the move-out condition inspection report. The landlord indicated that the landlords did not have written permission to keep the tenant's security deposit and that this Application was filed on September 3, 2015.

The landlords seek a monetary order of \$300.00 for a rental loss in September 2015. The landlords also seek to recover the \$50.00 filing fee for this Application. The landlord stated that the tenant was initially required to vacate the rental unit on October 1, 2015, as per a mutual agreement to end tenancy signed on August 26, 2015. The landlords provided a copy of this agreement. The landlord noted that on August 30, 2016, the tenant provided notice to vacate by September 1, 2015, but she left on September 3, 2015. The landlord said that he found a new tenant to rent as of September 1, 2015, by calling applicants on a waiting list that he had already created. The landlord maintained that because the tenant did not leave the rental unit on September 1, 2015, the new tenant could not move in and had to pursue other opportunities. The landlord explained that he entered the unit on September 3, 2015, and had to inspect and repair damages. The landlord stated that he called a number of applicants on the same waiting list on September 5, 2015, while he was out of town, and found another new tenant on September 12, 2015, to rent for October 1, 2015.

Analysis

Section 45 of the *Act* states that the tenant is required to give at least one month's written notice to end a tenancy and it must be given before the day when rent is due. In this case, the tenant vacated the rental unit on September 3, 2015, after giving notice to the landlords on August 30, 2015. This is less than one month's notice. As such, the landlords are entitled to compensation for losses they incurred as a result of the tenant's failure to comply with the terms of her tenancy agreement and the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage and show efforts to minimize that loss. In this case, the onus is on the landlords to prove, on a balance of probabilities, that the tenant caused a loss of rent for September 2015.

Based on the evidence presented, I accept that the landlords did attempt to the extent that was reasonable, to re-rent the unit after receiving notice of the tenant's intention to vacate the unit. The landlord found a new tenant for September 1, 2015, but because the tenant did not leave until September 3, 2015, the landlord lost the new tenant. The landlord called other potential tenants on September 5, 2015 and found a new

replacement tenant on September 12, 2015, to move in on October 1, 2015. I find that this is a reasonable period of time and that the landlord took quick action to find a replacement tenant. The landlords are only seeking a half month's rental loss of \$300.00 in order to mitigate losses. Rent of \$600.00 was due on September 1, 2015. The tenant did not pay any rent for September 2015. Therefore, I find that the landlords are entitled to \$300.00 in rental loss for September 2015.

The landlords continue to hold the tenant's security deposit of \$300.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenant's security deposit of \$300.00 in full satisfaction of the monetary award. No interest is payable over this period.

As the landlords were only partially successful in this Application, I find that they are not entitled to recover the \$50.00 filing fee paid for their Application.

Conclusion

I order the landlords to retain the tenant's entire security deposit of \$300.00 in full satisfaction of the monetary award.

The landlords' Application for an order of possession and a monetary order for damage to the rental unit, is dismissed without leave to reapply.

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: March 09, 2016

Residential Tenancy Branch

