



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on October 9, 2015. The Landlords filed seeking a monetary order to keep the security deposit and to recover the cost of their filing fee.

The hearing was conducted via teleconference and was attended by both Landlords. No one was in attendance on behalf of the Tenant. The Landlords provided affirmed testimony that the Tenant was served notice of this application, the Notice of Hearing, and their evidence, by registered mail on October 9, 2015. Canada Post tracking receipts were submitted into evidence.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision.

Based on the undisputed evidence of the Landlords, I find the Tenant was deemed served notice of this hearing in accordance with Sections 89(1)(c) and 90 of the *Act*. As such, the hearing continued to hear the undisputed evidence of the Landlords in absence of the Tenant.

Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation?

Background and Evidence

The Landlords submitted evidence the Tenant entered into a written month to month tenancy agreement that began on April 1, 2014. Rent of \$875.00 was due on or before the first of each month and on June 26, 2014 the Tenant paid \$437.50 as the security deposit plus \$437.50 as the pet deposit. A move in condition inspection report was

completed on May 31, 2014 and the move out condition report was completed on September 30, 2015.

On September 19, 2015 the Tenant sent the Landlords an email notice to end her tenancy effective October 1, 2015. The Tenant vacated the property as of September 30, 2015. The Tenant provided the Landlords with her forwarding address on October 5, 2015 via email. The Landlords returned the pet deposit to the Tenant via registered mail on October 6, 2015.

The Landlords testified they began advertising the rental unit immediately upon receipt of the Tenant's notice and they were not able to re-rent the unit until December 1, 2015. The Landlords now seek to keep the security deposit of \$437.50 as compensation for a portion of the loss of October 2015 rent which was suffered due to the Tenant giving improper notice to end her tenancy.

Analysis

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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.

In this case, rent was payable on the first of each month. Therefore, if the Tenant wished to end her tenancy effective September 30, 2015 she was required to provide the Landlord with written notice no later than August 31, 2015. The undisputed evidence was the notice to end the tenancy was sent by the Tenant on September 19, 2015 via email, to end the tenancy effective October 1, 2015. Accordingly, I find the Tenant ended the tenancy in breach of section 45(1) of the *Act*.

I accept the Landlords' evidence that they suffered a loss of rent for October 2015 due to the late notice provided by the Tenant. Accordingly, I grant the Landlords' application in the amount of \$437.50, pursuant to section 67 of the *Act*.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlords have succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$437.50 deposit since April 1, 2014.

Monetary Order –This application meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Loss of October 2015 Rent as claimed	\$ 437.50
Filing Fee	<u>50.00</u>
SUBTOTAL	\$ 487.50
LESS: Security Deposit \$437.50 + Interest 0.00	<u>-437.50</u>
Offset amount due to the Landlords	<u>\$ 50.00</u>

The Tenant is hereby ordered to pay the Landlords the offset amount of \$50.00 forthwith.

In the event the Tenant does not comply with the above order, The Landlords have been issued a Monetary Order in the amount of **\$50.00** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlords were successful with their application and were awarded \$487.50 monetary compensation. That award was offset against the Tenant's security deposit leaving a balance owed to the Landlords of \$50.00. The Tenant was ordered to pay the Landlords the offset balance.

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: April 26, 2016

Residential Tenancy Branch