



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, 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;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord asks to retain the tenants' security deposit as compensation for a rental loss incurred when the tenants vacated the rental unit without notice.

The tenants did not attend this hearing, although I waited until 1342 in order to enable the tenants to connect with this teleconference hearing scheduled for 1330. The landlord's agents attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent DS testified that the landlord served the tenants with the dispute resolution package on 14 October 2015 by registered mail. The agent DS testified that the mailings were sent to the address at which the tenants reside. The agent DS testified that she knows that the tenants reside there because that property is managed by the same property management company. The landlord provided me with a Canada Post customer receipt that showed the same. The agent DS testified that she checked the tracking information for these mailings and they were received. On the basis of this evidence, I am satisfied that the tenants were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit 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 agent DS, 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 October 2015. Monthly rent in the amount of \$1,200.00 was due on the first. The parties entered into a written tenancy agreement on 28 September 2015. The landlord continues to hold the tenants' security deposit in the amount of \$600.00.

The agent testified that the tenants began occupying the rental unit on 28 September 2015. The agent testified that the tenants vacated the rental unit and returned the keys on 5 October 2015 without providing notice. The agent testified that the tenants did not pay rent for October for the rental unit.

The agent testified that although the landlord continues to advertise the rental unit, it remains vacant.

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.

Pursuant to subsection 45(1) of the Act, the earliest effective date for which the tenants could have provided notice on 5 October 2015 was 30 November 2015. The tenants

did not provide this amount of notice. In failing to provide adequate notice the tenants breached the Act.

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.

The uncontested evidence of the landlord indicates that the landlord was unable to re-rent the unit for November despite advertising the unit as available. On the basis of this evidence I find that the tenants' late notices resulted in the landlord's loss for November rent. I find that the landlord has shown that it mitigated its loss by attempting to rent the unit. I find that the landlord has substantiated its claimed loss in the amount of \$600.00.

The landlord applied to keep the tenants' security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in this application, it is entitled to recover the filing fee paid from the tenants.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$50.00 under the following terms:

Item	Amount
Loss	\$600.00
Offset Security Deposit Amount	-600.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$50.00

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: April 28, 2016

Residential Tenancy Branch