



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- 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 their filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1345 in order to enable the tenants to connect with this teleconference hearing scheduled for 1330. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. All testimony was provided by the landlord AA (the landlord).

The landlord testified that the landlords served the tenants with the dispute resolution package on 14 November 2015 by registered mail. The landlords provided me with a Canada Post tracking number for the mailing. The landlord testified that the mailing was sent to the forwarding address provided by the tenants. 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.

Preliminary Issue – Amendment to Landlords' Application

The landlords did not check the box indicating that they sought to keep the tenants' security deposit because the tenants' late notice and breach of the fixed-term tenancy caused the landlord a rent loss; however, this claim was set out in the landlords' details of dispute. The landlords asked that I amend their claim to indicate that they have

claimed for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution. In determining whether or not to allow an amendment, I must consider the prejudice to the responding party.

As the landlords included the essential details of their claim in the details of dispute, there is no undue prejudice to the tenants in permitting the amendment as requested. For this reason, it is granted.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the landlord, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

The parties entered into a written tenancy agreement on 4 March 2015 for a fixed term from 1 April 2015 to 31 March 2016. The tenancy began 1 April 2015 and ended 31 October 2015 when the tenants vacated the rental unit. Monthly rent in the amount of \$1,200.00 was due on the first. The landlords continue to hold the tenants' security deposit in the amount of \$600.00, which was collected at the beginning of this tenancy.

On 4 October 2015, the tenants telephoned the landlords to state that the tenants would vacate the rental unit on or before 31 October 2015. At no time did the tenants provide written notice to end tenancy. The landlord testified that on the evening of 4 October 2015, the landlords posted the rental unit as available on two websites.

The landlord testified that the landlords hosted several showings over the next week and were able to secure a new tenant. The landlords testified that the new tenant was unable to start a new tenancy earlier than 15 November 2015. The landlord testified that the new tenancy agreement was for the same rent as the tenants'.

The landlord testified that the rental unit was vacant from 1 to 15 November 2015 and as a result the landlords experienced a rental loss of \$600.00.

On 2 November 2015, the landlords wrote to the tenants to state that they had incurred a rental loss because of the tenants' breach and requested to retain the tenants' security deposit. The landlord testified that the tenants responded to this letter and did not provide permission to the landlords to retain the security deposit.

Analysis

I find that the landlords and tenants entered into a fixed term tenancy for the period 1 April 2015 to 31 March 2016.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

A tenant may end a fixed term 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 the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

This means that a tenant cannot end the tenancy before the end of the fixed term. In this case, the tenants vacated the rental unit before the completion of the fixed term and did not pay any amount towards the remaining term. The tenants have breached the Act and tenancy agreement and as a result the landlords experienced a loss.

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 landlords have established their loss in the amount of \$600.00 arose directly from the tenants' failure to complete the fixed term tenancy. The landlords' evidence regarding their attempts at re-rental indicates that they mitigated their losses. Pursuant to sections 45, 67 and 7 of the Act, the landlords are entitled to recover the full amount of their loss: \$600.00.

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

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

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

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

The landlords are provided with this order in the above terms. 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: June 01, 2016

Residential Tenancy Branch