



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 December 4, 2015. The Landlords filed seeking a Monetary Order to keep the security deposit and recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the 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 and this hearing by registered mail on December 7, 2015. Canada Post tracking information was provided during the Landlords' oral submissions.

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.

Based on the undisputed evidence of the Landlords, I find that the Tenant was deemed served notice of this application and hearing on December 12, 2015, five days after they were mailed, pursuant to section 90 of the *Act*.

As the Tenant has been deemed served notice of this proceeding, I continued to hear the undisputed evidence of the Landlords, in absence of the respondent Tenant.

Upon review of the Landlords' application for dispute resolution the Landlords filed seeking a \$1,275.00 monetary order an amount equal to one month's rent. In the Details of the Dispute the Landlords state the Tenant vacated the property without providing them with a full month's notice and as a result they were not able to re-rent the unit until the following month.

Based on the aforementioned I find the Landlords had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover compensation equal to the one full month for which they lost rent. Therefore, I amend the Landlords' application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the *Act*.

Issue(s) to be Decided

Have the Landlords proven entitlement to monetary compensation?

Background and Evidence

The Landlords testified the Tenant entered into a written fixed term tenancy agreement that began on January 15, 2015 and was not scheduled to end until January 15, 2016. Rent of \$1,275.00 was payable on or before the 15th of every month. On January 15, 2015 the Tenant paid \$637.50 as the security deposit.

Both parties were represented at the move in inspection on January 15, 2015 and the move out inspection on November 15, 2015.

On October 30, 2015 the Tenant served the Landlords notice to end her tenancy via email. The Tenant's email notice indicated she would be ending the tenancy effective November 15, 2015.

The Landlords asserted that due to the Tenant's late notice, they were not able to re-rent the rental unit until December 15, 2015. They now seek to recover the loss of rent for the period of November 15, 2015 to December 14, 2015.

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 (2) of the Act stipulates that a tenant may end a fixed term 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 not earlier than the date specified in the tenancy agreement as the end of the tenancy.

In this case the Tenant gave less than one month's notice to end her fixed term tenancy on November 15, 2015, which was two months prior to the end of the fixed term. Accordingly, I find the Tenant ended her tenancy in breach of section 45(2) *Act*, which caused the Landlords to suffer a loss of one month's rent.

I find the Landlords complied with section 7 of the *Act* by attempting to re-rent the unit for as soon as possible. However, despite their efforts they were not able to re-rent the unit sooner.

Based on the above I find the Landlords have provided sufficient evidence to prove the merits of the application. Accordingly, I award the Landlords loss of rent for November 15 to December 14, 2015 in the amount of **\$1,275.00**, 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*.

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

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$637.50 deposit since January 15, 2015.

| | |
|--|-------------------------|
| Loss of rent | \$1,275.00 |
| Filing Fee | <u>50.00</u> |
| SUBTOTAL | \$1,325.00 |
| LESS: Security Deposit \$637.50 + Interest 0.00 | <u>-637.50</u> |
| Offset amount due to the Landlord | <u>\$ 687.50</u> |

The Tenant is hereby ordered to pay the Landlords the offset amount of \$687.50 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 **\$687.50** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlords were successful with their application and were granted monetary compensation in the amount of \$1,325.00. The monetary award was offset against the Tenant's security deposit leaving a balance owed to the Landlords of \$687.50.

This decision is final, legally binding, and 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: July 05, 2016

Residential Tenancy Branch