



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenants with the notice of hearing and the submitted documentary evidence package via Canada Post Registered Mail on September 22, 2016. The landlord has submitted a copy of two Canada Post Registered Mail Customer Receipt Tracking labels as confirmation. Both parties confirmed that the tenants served the landlord with their submitted documentary evidence via Canada Post Registered Mail on March 16, 2017. Neither party raised any issues with service. As both parties have attended and confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been properly served as per section 88 and 89 of the Act.

During the hearing the landlord withdrew a portion of her monetary claim for \$415.55 for moving services and amended the claim for RV Parking reimbursement by lowering it to \$247.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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

This tenancy agreement began on June 7, 2016 on a fixed term tenancy ending on July 31, 2017 as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$750.00 payable on the 1st day of each month. A security deposit of \$360.00 was paid.

The landlord seeks an amended monetary claim of \$697.00 which consists of:

| | |
|----------|---------------------------------|
| \$450.00 | Loss of Rental Revenue |
| \$247.00 | Tenant RV Parking Reimbursement |

The landlord seeks a monetary claim of \$450.00 for the loss of rental income because the tenants breached the fixed term tenancy by prematurely ending it on August 31, 2016. The landlord stated that upon being notified she re-advertised the rental on July 7, 2016 for \$750.00. Both parties agreed that the landlord was able to re-rent the property beginning September 1, 2016 for \$700.00 per month.

The tenants dispute this claim stating that the landlord was given almost 2 months to re-rent the property at the same rate, but instead chose to rent at a lower rate of \$700.00 after only 1 week.

The landlord seeks \$47.00 for the cost of RV Parking for the tenants. Both parties agreed that the tenants had an RV parking agreement which was included subject to strata approval. Both parties confirmed that RV parking was not approved by the strata. The landlord offered to pay for the tenants' RV parking at an alternate lot as a result. The landlord states that because the tenants vacated the rental unit prematurely she has suffered a loss for this expense.

The tenants disputed this claim stating that they were not responsible to any parking costs for their RV.

Analysis

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/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.

I accept the evidence of both parties and find that the landlord has failed to establish a claim for the \$697.00 for the loss of revenue and rv parking reimbursement.

On the landlord's claim for \$450.00 for the loss of revenue, I find that the landlord has failed to provide sufficient evidence to satisfy me that efforts were made to mitigate any possible losses by re-advertising the rental unit for the same monthly rent. Although the landlord advertised the rental at \$750.00 for 1 week, I find that this would be insufficient time and unreasonable to locate a replacement tenant. Instead the landlord chose to change the advertisement by lowering the monthly rent rate to \$700.00. As such, I find that the landlord failed to properly try to mitigate any possible losses within a reasonable amount of time. This portion of the landlord's claim is dismissed.

On the landlord's claim for \$247.00 for RV Parking reimbursement, I find that the landlord has failed to establish a claim. It is clear based upon the landlord's own direct testimony that she was trying to be nice by offering to pay for the tenants' RV Parking after learning that the strata had disallowed further RV parking onsite. The landlord has not provided any evidence of an entitlement for this claim under the Act, regulations or tenancy agreement. The landlord has also failed to provide sufficient evidence that the tenants would be responsible for this portion of the claim and that the landlord would be entitled to recovery of this expense. This portion of the landlord's claim is dismissed.

Conclusion

The landlord's application 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 23, 2017

Residential Tenancy Branch