



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

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

- a monetary order for unpaid rent 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 their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant confirmed that she was served with the landlords' notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 3, 2016. The tenant stated that no documentary evidence was submitted by the tenant. As both parties have attended and have confirmed receipt of the notice of hearing and the filed documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent and recovery of the filing fee?

Are the landlords 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 began on September 1, 2016 on a fixed term tenancy ending on August 31, 2016 as shown by the submitted copy of the signed tenancy agreement dated September 1, 2016. The monthly rent was \$740.00 payable on the 1st day of each month. A security deposit of \$370.00 was paid on August 15, 2016.

The landlords seek a monetary claim for unpaid rent/loss of revenue of \$740.00 for October 2016. The landlords clarified that the tenant entered into a signed tenancy and moved into the rental unit on August 31, 2016. The tenant then gave notice on September 14, 2016 to vacate the rental premises and moved out on September 14, 2016 without proper 1 month notice.

The tenant confirmed in her direct testimony that she provided notice to the landlord in writing on September 14, 2016 to vacate the premises on September 14, 2016.

The landlords also stated that they immediately began advertising the rental unit, but was unable to find a suitable replacement tenant until November 1, 2016.

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.

In this case, both parties confirmed in their direct testimony that the tenant provided notice to vacate the rental premises and move-out on September 14, 2016. I find that the landlord has established an entitlement to recover lost rental income for October 2016 as the tenant had entered into a 12 month fixed term tenancy ending on August 31, 2016. During the hearing it was clarified by both parties that this was a 12 month tenancy agreement that began on September 1, 2016 and that the 2016 date indicated on the end of fixed term date of the signed tenancy agreement was an obvious error that should have been 2017. I also find that the tenant failed to properly provide 1

months' notice to end the tenancy to the landlord and the landlord mitigated any possible losses by immediately advertising the premises for rent, but was not successful in obtaining a suitable tenant until November 1, 2016. The landlord has established a claim for \$740.00 in lost rental income.

Having been successful the landlord is also entitled to recovery of the \$100.00 filing fee. I also authorize the landlord to retain the \$370.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted a monetary order for \$470.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 31, 2017

Residential Tenancy Branch