



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord states that all evidence supplied for the hearing was provided to the Tenant in the evidence package served in October 2016. The Tenant states that there was no copy of a monetary order worksheet and no copy of texts between the parties as contained in the package sent by the Landlord. Noting that the Residential Tenancy Branch (the “RTB”) did not receive a copy of the monetary order worksheet with the original evidence materials and that the RTB received the worksheet on April 21, 2017, I accept that the Tenants also did not receive the monetary order worksheet. However rather than excluding the worksheet that does not contain any substantive evidence I read out the contents of the work sheet to the Tenant in the hearing. I also briefly described the contents of the text page and in noting that nothing in the texts can be seen to be relevant to the Landlord's claims, I disallowed their consideration. I allowed

the Landlord to provide oral evidence on the matter of the texts if they did become relevant and I note that they did not.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on August 1, 2016 as a fixed term to end September 1, 2017. At the outset of the tenancy the Landlord collected \$675.00 as a security deposit. The Landlord received the forwarding address by email and used that address to make its application. The Tenant states that the email was sent on October 5, 2016 and I note that the Landlord made its application on October 20, 2016.

The Landlord submits that the Tenants were very noisy during the tenancy and that the Landlord warned the Tenants on several occasions to reduce the noise. The Landlord states that the Parties started discussing the end of the tenancy early in September 2016, including the option of the Tenants subletting the unit. The Landlord states that on September 5, 2016 the unit was initially advertised on various sites online for an occupancy date of October 1, 2016 at the same rental rate. The Landlord submits that on September 17, 2017 the Tenants gave written notice to end the tenancy for September 30, 2016 and that the Tenants did move out on that date. The Landlord states new tenants were found for a tenancy start date of October 1, 2016. The Landlord states that as the Tenant's ended the fixed term tenancy the Landlord had to spend time earlier than would otherwise have been anticipated to find new tenants. The Landlord claims \$675.00 as a leasing fee for the cost of finding a new tenant, including conducting credit and reference checks, and \$100.00 as the cost of advertising for a new tenant. The Landlord states that she has no receipts for the claimed advertising costs.

The Tenant argues that since the Landlord was able to find a new tenant for the rest of the fixed term there are no losses that can be claimed that arise from their early ending of the tenancy.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Section 15 of the Act provides that a landlord must not charge a person anything for

- accepting an application for a tenancy,
- processing the application,
- investigating the applicant's suitability as a tenant, or
- accepting the person as a tenant.

Although the Tenants breached the Act by ending the fixed term tenancy the Landlord is required to mitigate any losses arising from that breach. I find that the Landlord acted reasonably to mitigate its losses by advertising the unit as soon as possible. As the advertising costs were incurred in order to meet the Act's requirements that the Landlord mitigate the far greater costs of possible lost rental income I dismiss the claim for advertising costs. Even if the Landlord is able to claim advertising costs, as there are no receipts to support the claimed costs I find that the Landlord failed to provide sufficient evidence to establish that these costs were incurred. As the Act does not allow a landlord to charge for further finding a new tenant I dismiss the Landlord's claim for a leasing fee. As the Landlord found a new tenant for October 1, 2016 I find that the Landlord has failed to show any rental loss over the remaining period of the fixed term. As the Landlord's application has not met with success I decline to award recovery of

the filing fee and in effect the application is dismissed in its entirety. I order the Landlord to return the security deposit of \$675.00 plus zero interest forthwith.

I note that since the Tenant only sent the forwarding address by email there is no way to determine when it was received by the Landlord and I caution the Tenant against using email in the future as a method of providing its forwarding address in writing as required under the Act.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$675.00**. If necessary, this order may be filed in the Small Claims 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: April 25, 2017

Residential Tenancy Branch