



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with application from both the landlords and tenants under the *Residential Tenancy Act* (the *Act*).

The tenants applied for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38.

The landlords applied for

- a monetary order for unpaid rent and 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 security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 10 minutes. The personal landlord represented both herself and the corporate landlord and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the landlords' application for dispute resolution dated February 9, 2017 was served on each of the tenants by registered mail on February 10, 2017. The landlord provided two Canada Post tracking numbers as evidence of service. I find that the tenants were deemed served with the landlord's application for dispute resolution and evidentiary materials in accordance with sections 88, 89 and 90 of the *Act* on February 15, 2017, five days after mailing.

At the outset of the hearing the landlord made an application to amend the amount of the monetary claim sought. The landlord testified that they were able to rent out the rental unit for the month of March, 2017 to mitigate the rental income loss. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, I amend the landlords' application to decrease the landlords' monetary claim from \$2,600.00 to \$1,300.00.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent and damages as claimed? Are the landlords entitled to retain all or a portion of the security deposit for this tenancy? Are the landlords entitled to recover the filing fee of this application from the tenants?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This periodic tenancy began in May, 2015. The monthly rent is \$1,300.00 payable on the first of the month. A security deposit of \$800.00 was paid by the tenants at the start of the tenancy and still held by the landlord.

The landlord testified that the tenant gave verbal notice that they intended to end the tenancy on January 31, 2017, sometime during the first two weeks of that month. The landlord said that the tenants did not provide written notice to end the tenancy, or provide sufficient time as required under the *Act*. The landlord testified that because of this they were unable to find a new occupant for the rental unit for the month of February, 2017.

Analysis

The tenants did not attend the hearing which was scheduled by conference call at 1:30pm. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the tenants' application without leave to reapply.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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.

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. I find that the tenants were obligated to pay the monthly rent in the amount of \$1,300.00. I find that the tenants did not give the landlord notice to end the tenancy in the form and content required under section 52 of the *Act*. I further find that the tenants did not provide sufficient notice as required by section 45(1) of the *Act*. I find that the tenants were obligated to pay the monthly rent for the month of February, 2017. Consequently, I find that the landlords are entitled to the

equivalent of the rent for the month of February, 2017. I issue a monetary award in the landlord's favour in the amount of \$1,300.00 the equivalent of the February, 2017 rent.

As the landlords' application was successful, the landlords are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenants' security deposit of \$800.00 in partial satisfaction of the monetary award issued in the landlords' favour.

Conclusion

The tenants' application is dismissed.

I issue a monetary order in the landlord's favour in the amount of \$600.00 under the following terms, which allows the landlord to recover the rent for February, 2017, and the filing fee for their application:

Item	Amount
Unpaid Rent February, 2017	\$1,300.00
Filing Fees	\$100.00
Less Security Deposit	-\$800.00
Total Monetary Order	\$600.00

The tenants must be served with this Order as soon as possible. Should the tenants 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 1, 2017

Residential Tenancy Branch