



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNR MNSD OPN

Introduction

This hearing was scheduled to hear the landlords' application pursuant to the *Residential Tenancy Act* (the "*Act*") to:

- retain the tenant's security deposit pursuant to section 38 of the *Act*;
- recover unpaid rent pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only landlord, A.W. (the "landlord") attended the hearing. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that an Application for Dispute Resolution and evidentiary package was handed to the tenant in person on March 4, 2017. Pursuant to sections 88, 89 & 90 of the *Act* the tenant is found to have been served with these documents on the same day of service.

Issue(s) to be Decided

Can the landlords retain the tenant's security deposit?

Are the landlords entitled to a monetary order for unpaid rent?

Can the landlords recover the filing fee?

Background and Evidence

The landlord provided undisputed testimony that this was a fixed term tenancy agreement that was set to run from September 1, 2016 to September 1, 2017. Rent was \$2,300.00 per month and a security deposit of \$1,150.00 was put against outstanding

rent for February 2017. The landlord explained that on December 31, 2017 the tenant provided written notice of his intention to vacate the rental unit by January 31, 2017.

The landlord said that she was seeking a Monetary Order of \$3,450.00 in satisfaction for unpaid rent that remained unpaid after the tenant had vacated the rental unit prior to the expiration of the fixed-term tenancy. Specifically the landlords sought the following relief:

ITEM	AMOUNT
Unpaid Rent for February 2017	\$2,300.00
Unpaid Rent for March 2017	2,300.00
Less Security Deposit	(-\$1,150.00)
TOTAL =	\$3,450.00

As part of their evidentiary package, the landlords provided a copy of a social media message exchange that was had with the tenant. In a February 9, 2017 conversation, the tenant directed the landlords to keep the security deposit against unpaid rent for February 2017.

During the course of the hearing the landlord explained that she made significant efforts to re-rent the unit and to find new tenants as soon as she received notice of the tenant's intention to vacate the rental unit early. Specifically, the landlord noted that she placed two separate notices on social media starting January 1, 2017, and placed an advertisement on Craigslist on January 4, 2017. She said that she showed the rental unit every weekend starting in January 2017 but did not succeed in securing a new tenant until April 1, 2017.

Analysis

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord 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."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the

landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

In this case, written notice was provided to the landlords on December 31, 2016. The landlord testified that upon receipt of this notice she immediately posted two notices on social media listing the apartment for rent for February 1, 2017. In addition, on January 4, 2017, a few days after receiving the tenant’s notice, the landlords advertised the rental unit on Craigslist. During the hearing the landlord explained that she had viewings of the rental unit every weekend starting in January 2017, but was unable to rent the suite until April 1, 2017. Accordingly, I find that the landlords have made *reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect*. The landlords are therefore entitled to the entire amount sought in her application for a Monetary Order.

The landlords have also applied for an Order allowing her to retain the tenant’s security deposit. I find this to be a moot point as the landlords have already received the tenant’s written permission to retain the deposit against outstanding rent.

Section 38 of the *Act* requires the landlord to either return a tenant’s security or pet deposit in full or file for dispute resolution for authorization to retain these deposits 15 days after the *later* of the end of a tenancy, or upon receipt of a tenant’s forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained a tenant’s written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a). I find that while the tenancy ended on January 31, 2017, that the landlords had received the tenant’s written permission to retain all of the security deposit to offset loss on February 9, 2017.

As the landlords were successful in their application they may recover the \$100.00 fee from the tenant.

Conclusion

I issue a Monetary Order in the landlords’ favour in the amount of \$3,550.00 against the tenant based on the following monetary awards:

ITEM	AMOUNT
Unpaid Rent for February 2017	\$2,300.00
Unpaid Rent for March 2017	2,300.00
Return of Filing Fee	100.00
Less Security Deposit	(-\$1,150.00)
TOTAL =	\$3,550.00

The landlords are provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: July 27, 2017

Residential Tenancy Branch