



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FF MNR

Introduction

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

- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's legal counsel, MR, appeared on behalf of the landlord in this hearing and was given full authority to do so by the landlord. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the Act, I find the tenants were duly served with the landlord's Application. Neither party submitted written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord's legal counsel provided the following facts. This fixed-term tenancy began on March 15, 2016 and was to end on March 31, 2017. The tenants moved out one month early, by way of a Mutual Agreement, on September 1, 2016. Monthly rent was set at \$2,100.00, and the landlord collected a security deposit of \$1,050.00, which the landlord still holds. The tenants made their rent payments by way of post-dated cheques.

The tenants sent the landlord an email on August 24, 2016, stating that they were vacating the apartment on September 1, 2016. The tenant attached a Mutual Agreement form and requested that the Mutual Agreement to End Tenancy be signed by the landlord.

The tenant's realtor, NW, replied to the tenants stating that one month notice was required, and the landlord signed the Mutual Agreement to End Tenancy. The tenant's realtor, NW, testified in this hearing, and read the email that was sent to the tenants. The realtor admitted that there was a language barrier communicating with the tenants. The email stated that "she will post rent advertisement...you might pay loss of rent before she finds a tenant".

The landlord is seeking a monetary order for unpaid rent for the months of July, August, and September 2016. The landlord's legal counsel submitted that although the tenants did provide post-dated cheques in the amount of \$2,100.00 for each of those months, the July and August 2016 payments were returned as NSF, and the tenants had placed a stop payment on the September 2016 rent cheque.

The tenants did not dispute that they had placed a stop payment on the September 2016 rent cheque, stating that as part of the Mutual Agreement, all parties agreed that the landlord could retain the tenant's \$1,050.00 security deposit in satisfaction of September rent, and that no further payments were required.

The tenants testified that they were never made aware that the July and August 2016 payments were NSF, and to their knowledge the payments were received by the landlord.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) *the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Both parties agreed that a Mutual Agreement to End Tenancy was signed for this fixed-term tenancy to end early on September 1, 2016. Neither party submitted a copy of this Mutual Agreement for this hearing.

The evidence is clear that the tenants did not comply with section 45(2) of the Act in ending this fixed term tenancy. The tenants' understanding, though, was that the \$1,050.00 security deposit would be kept by the landlord in satisfaction of the September 2016 rent that would otherwise have become owing. Although the landlord mentioned this in their reply to the tenants, the landlord signed the mutual agreement, and did not state the value of the loss that the tenants were responsible for as a result of the mutual agreement to end tenancy.

As the landlord did not submit any documentation, or a copy of the mutual agreement, I find the landlord failed to provide sufficient evidence to support that the tenants did not fulfill their obligations under the signed Mutual Agreement. As the tenants agreed to the retention of the security deposit by the landlord, I allow the landlord to retain the \$1,050.00 in satisfaction of the September 2016 rent.

The tenants also disputed the landlord's application for July and August 2016 rent stating that the rent was paid. The landlord did not provide any statements, cancelled cheques, letters, witness testimony, or any kind of documentation to support that the July and August 2016 cheques were NSF. In the absence of sufficient supporting evidence, I find the landlord has not substantiated their monetary application for the recovery of July and August 2016 rent.

As the landlord was not completely successful in their application, I dismiss the landlord's application for recovery of the filing fee.

Conclusion

I order the landlord to retain the tenants' security deposit in the amount of \$1,050.00. The remainder of the landlord's monetary claim 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: August 9, 2017

Residential Tenancy Branch