



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

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

- a monetary order for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for the application from the tenants pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 20 minutes. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions, and to call witnesses.

The landlord testified that the landlord's application for dispute resolution dated March 9, 2017 was served on the tenant at the address for service provided by the tenant by registered mail. The landlord provided a Canada Post tracking number as evidence of service. Pursuant to sections 89 and 90 of the Act, I find that the tenant was deemed served on March 14, 2017, five days after mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

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

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This fixed term tenancy began on January 1, 2016 and was scheduled to end on December 31, 2016. The monthly rent was \$975.00. A security deposit of \$497.50 was paid by the tenant at the start of the tenancy and is still held by the landlord.

The tenant gave notice of their intention to end the tenancy on September 15, 2016 and vacated the rental unit on September 30, 2016. The landlord testified that the rental unit was left in disarray with the tenant's garbage left throughout the unit. The tenant has not provided a forwarding address to the landlord as of the date of the hearing.

The landlord testified that a new tenant was found and they took possession of the rental unit on November 1, 2016. The landlord said they incurred various costs for cleaning and repairs as the tenant left the rental unit in a terrible state. The landlord did not submit any receipts into written evidence but estimated the costs are considerable.

Analysis

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 claimant also has a duty to take reasonable steps to mitigate their loss.

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 landlord on September 15, 2016. The landlord took steps and was able to find a new tenant for November 1, 2016. I find that the landlord took reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. I accept the landlord's testimony that the landlord suffered a loss of the rent for the month of October due to the tenant's breach of the tenancy agreement. I further accept that despite the landlord taking reasonable efforts the rental unit was only rented out on November 1, 2016. Therefore, I find that the landlord is entitled to a monetary award in the amount of \$975.00 the equivalent of the rent for the month of October.

I find that the landlord has provided insufficient evidence in support of her claim for a monetary award for other losses. The landlord did not submit any receipts, invoices or written evidence in support of the monetary amount claimed. I find there to be insufficient evidence to find that on a balance of probabilities there has been a loss by

the landlord attributable to the breach of the tenant. I dismiss this portion of the landlord's claim.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$487.50 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord's application was partly successful the landlord is entitled to recover the \$100.00 filing fee of this application.

Conclusion

I issue a monetary award in the landlord's favour in the amount of \$587.50 under the following terms:

Item	Amount
Rent for October 2016	\$975.00
Recovery of Filing Fee	\$100.00
Less Security Deposit	-\$487.50
TOTAL:	\$587.50

The landlord is provided with a Monetary Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: August 10, 2017

Residential Tenancy Branch