



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on May 10, 2017. The landlord has submitted in support of this claim, a copy of the Canada Post Tracking label. The landlord also states that the tenant was served with documentary evidence filed with the application for dispute. The tenant disputed the landlord's claim stating that the only documentary evidence received by the tenant from the landlord for the hearing is a copy of the condition inspection report for the move-out. A review of the Residential Tenancy Branch (RTB) File and the online system shows no record of any additional evidence filed by the landlord. The landlord was unable to provide any supporting evidence that documentary evidence was filed with the RTB or served to the tenant. On this basis, I find that no additional documentary evidence was filed or served as claimed by the landlord. The hearing shall proceed solely on the direct testimony of both parties.

At the outset the landlord clarified that she seeks a monetary claim of \$650.00 for the loss of rental income, to offset that claim against the held security deposit and recovery of the filing fee.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for loss of rental income and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided undisputed affirmed testimony that this tenancy began on August 1, 2016 on a fixed term tenancy ending after 1 year on August 30, 2017. A security deposit of \$650.00 was paid. The landlord claims that the tenant breached the fixed term tenancy by prematurely ending it on April 30, 2017. The landlord claims that efforts were made to advertise the rental unit, but proved unsuccessful for May 1, 2017. The landlord states that the rental unit was re-rented for June 15, 2017. The landlord clarified that she only seeks recovery of ½ months rent equal to the \$650.00 security deposit as opposed to the 1 ½ months rent of lost rental income.

The tenant confirmed that she prematurely ended the tenancy on April 30, 2017 due to issues with the landlord's agents.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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.

In this case, I accept the undisputed evidence of the landlord and find that the tenant prematurely ended the tenancy on April 30, 2017 instead of August 30, 2017. The landlord provided undisputed testimony that efforts were made to advertise the rental unit, but was unsuccessful until June 15, 2017. Residential Tenancy Branch Policy Guideline #5, Duty to Minimize Loss states in part,

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring...

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed.

In this case, I find based upon the undisputed evidence of the landlord that reasonable efforts were made to advertise the rental unit for rent, but that the landlord was unsuccessful until June 15, 2017. As such, the landlord has established a claim for loss of rental income of \$650.00 which is equal to ½ of the monthly rent.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. In offsetting this claim, I authorize the landlord to retain the \$650.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$100.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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: October 05, 2017

Residential Tenancy Branch