



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HORST DAMMHOLZ REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- 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 16, 2017. The landlord's agent (the landlord) stated that he is unsure whether the tenant was served with the late submitted documentary evidence. The tenant confirmed that no late documentary evidence was provided by the landlord.

I accept the undisputed affirmed evidence of both parties and find that the tenant was properly served with the notice of hearing package as per sections 88 and 89 of the Act. I also find based upon the undisputed evidence of both parties that the landlord has failed to serve the tenant with the submitted late documentary evidence and as such exclude the landlord's documentary evidence from consideration in this hearing. The hearing shall proceed based upon the affirmed testimony of both parties.

Issue(s) to be Decided

Are the landlord entitled to a monetary order for money owed or compensation for damage or loss 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.

Both parties agreed that this tenancy began on April 1, 2017 on a fixed term tenancy ending on March 31, 2018 based upon a signed tenancy agreement dated March 31, 2017.

The landlord seeks a monetary claim of \$700.00 for the loss of rental income for the period April 1 to 15, 2017.

The landlord clarified that the tenant gave notice to end the tenancy via email on March 20, 2017 due to personal reasons. The landlord provided affirmed testimony that upon being notified the landlord began advertising the rental unit to be rented, but was not successful in obtaining a new tenant until April 15, 2017. The landlord seeks recovery of ½ months rent of \$900.00 from which the tenant was credited \$200.00 for a partial payment based a \$1,800.00 monthly rent.

The tenant confirmed the landlord's direct testimony stating that she had agreed to forfeit her \$900.00 security deposit for breaching the fixed term tenancy.

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.

I accept the undisputed affirmed testimony of both parties and find that the landlord has provided sufficient evidence that the tenant breached the fixed term tenancy by giving notice to end the tenancy on March 20, 2017. I also accept the undisputed evidence of the landlord that upon being notified the landlord made reasonable effort to re-rent the premises by advertising it for rent.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted a monetary order for \$800.00.

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 12, 2017

Residential Tenancy Branch