



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNR

Introduction

This hearing was convened in response to applications by the landlords pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary award for unpaid rent pursuant to section 67 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The tenants confirmed receipt of the landlords’ application for dispute resolution and evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and evidence package.

I note while the landlords applied to amend their monetary award to reflect an application for a monetary award of \$1,175.00, the landlords incorrectly included a calculation which withheld the security deposit without the tenant’s written permission, and without an order from an arbitrator with the *Residential Tenancy Branch*. I will therefore amend the landlords’ application pursuant to section 64(3)(c) in reflection of an application concerning only; Loss of July rent (\$850.00), Rental Shortfall (\$150.00), Filing Fee (\$100.00).

Issue(s) to be Decided

Are the landlords entitled to a monetary award?

Can the landlords recover the filing fee from the tenant?

Background and Evidence

Testimony was presented at the hearing that this tenancy began on September 1, 2016 and ended on June 30, 2017. Rent was \$1,850.00 per month, and a security deposit of \$925.00 paid at the outset of the tenancy, continues to be held by the landlords.

The landlords represented at the hearing by C.H. (the "landlord") explained she was seeking a monetary award of \$1,850.00 in relation to unpaid rent for July 2017, along with a rental shortfall of \$150.00. The landlord has also applied for a return of the filing fee.

At the hearing, the landlord explained that this was a fixed term tenancy that was scheduled to end on August 31, 2017. She stated that on May 21, 2017 the tenants verbally informed her of their intention to vacate the rental unit for June 30, 2017. The landlord stated that she wished to recover rent which was due for July 2017 because no formal written notice was given, informing the landlord of the tenants' intention to vacate the rental unit, and because she was unable to find a new tenant(s) in time to make up for the shortfall of the broken fixed-term lease. The landlord said that she was able to re-rent the suite for August 1, 2017 but at a rate that was \$150.00 lower than she had previously rented the unit for. Additionally, no rent was collected for July 2017.

The landlord said that after receiving notice of the tenants' intention to vacate the unit on May 21, 2017 she posted an ad online on May 22, 2017 advertising the unit for immediate occupation. She said that from this 7 parties contacted her and she arranged viewings 3 days later on May 25, 2017. On May 30, 2017 the landlord and a new tenant agreed to the terms of a rental agreement starting on August 1, 2017 if the landlord agreed to lower the rent by \$150.00. The landlord continued by explaining that the new renter could not take possession of the unit for July 2017 because they were committed to a lease with their landlord at the time.

The tenants did not dispute the narrative presented at the hearing but wished to forward additionally complaints regarding the rental unit. I explained to the tenants, that I was bound to only consider the application before me, that of the landlord's.

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 idea is expanded in *Residential Tenancy Policy Guideline #5* which states, “Where the landlord or tenant breaches a term of the tenancy agreement or the *Act*, the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss...efforts to minimize the loss must be “reasonable” in the circumstances...Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent.”

The landlord provided undisputed testimony that the tenants moved out of the property on June 30, 2017, two months before their fixed-term tenancy was set to expire. The landlord said that immediately upon being informed on May 21, 2017 of the tenants' intention to vacate the rental unit, she posted a notice online advertising the unit for rent on May 22, 2017. She explained that within 3 days of having posted an advertisement, that 7 parties responded to her ad and viewings were arranged for May 25, 2017. The unit was re-rented on May 30, 2017. I find that the landlord has made *reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect*.

Section 67 of the *Act* states, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. I find that a violation of the tenancy agreement occurred by the tenants, that the landlord had to make reasonable efforts to re-rent the home, as per their obligation under section 7 of the *Act*. I find that the landlord is entitled to unpaid rent for July 2017. I am not satisfied based on the evidence presented at the hearing, that the landlord is entitled to an award related to the difference in rent between the current rate paid by the new tenant, and the rate formerly paid by the respondent tenant. The landlord had 3 viewings and chose to enter an agreement with a person who was looking to rent the unit for a slightly lower rental rate. I do not find that the responsibility to cover this shortfall should be passed on the respondent tenants.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the entire amount of the tenants' security deposit as partial compensation for the

monetary award. As the landlord was successful in her application, she may recover the \$100.00 filing fee from the tenants.

Conclusion

I issue a Monetary Order of \$1,000.00 in favour of the landlord as follows:

Item	Amount
Unpaid Rent for January 2017	\$1,825.00
Return of Filing Fee	100.00
Less Security Deposit	(-925.00)
Total =	\$1,000.00

The landlord is provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: January 12, 2018

Residential Tenancy Branch