



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF MND MNDC MNR MNSD OPB

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* (“*Act*”):

The landlord sought:

- a monetary order for money owed under the tenancy agreement pursuant to section 67 of the *Act*;
- an order of possession for breach of an agreement with the landlord pursuant to section 55 of the *Act*;
- an order allowing the landlord to retain the tenant’s security deposit pursuant to section 38 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenant sought:

- a monetary award pursuant to section 67 of the *Act*.

Only the landlord’s agent, S.T. (the “landlord”) attended the hearing. The landlord was given a full opportunity to be heard, to present their testimony and to make submissions.

The landlord confirmed receipt of the tenant’s application for dispute resolution and explained that she had served the tenant with her application and evidentiary package by way of Canada Post Registered Mail on September 20, 2017. A copy of the Canada Post tracking number was provided to the hearing. Pursuant to sections 88, 89 & 90 of the *Act*, the tenant is deemed served with these documents, five days after their posting on September 25, 2017.

Following opening remarks, the landlord asked if she could amend her application for a monetary award to reflect only unpaid rent for the month of June 2017. The landlord said she would still like to pursue her application to retain the security deposit and to a return of the filing fee. As the tenant would not be unfairly prejudiced by this amendment, pursuant to section 64(3)(c) of the *Act*, the landlord's application is amended to reflect this change.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord retain the tenant's security deposit?

Can the landlord recover the filing fee from the tenant?

Background and Evidence

The landlord provided undisputed testimony that this was a fixed term tenancy which began on November 1, 2016 and was set to end on October 31, 2017. Rent on the tenancy agreement was listed at \$1,250.00 but was reduced to \$1,100.00 because of a rental incentive offered to the tenant. A security deposit of \$625.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord explained she was seeking a monetary order to reflect the unpaid rent for June 2017, along with a return of the filing fee. The landlord said that the tenant had a fixed-term tenancy which was set to expire on October 31, 2017 but because of unforeseen circumstances, the tenant informed her on May 1, 2017 that he would be vacating the rental unit for May 31, 2017. The landlord said that because of this late notice, she was unable to re-rent the suite until July 1, 2017.

During the hearing, the landlord provided undisputed testimony that she advertised the rental suite for rent, "immediately" after being informed by the tenant that he would be leaving on May 31, 2017. She said that ads were placed online and with the local rental board. The landlord said these ads were regularly refreshed and that she was able to secure a tenant for July 1, 2017.

No testimony was presented to the hearing by the tenant regarding his application.

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 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 May 1, 2017. The landlord testified that upon receipt of this notice she “immediately” posted online ads which were regularly refreshed. The landlord said that she was able to secure a tenant for July 1, 2017 but lost out on rent for June 2017. I find the landlord has made reasonable efforts to find a new tenant to move following the date that the tenant’s notice takes legal effect and that she is entitled to a monetary award of \$1,100.00 in reflection of unpaid rent for June 2017.

Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenant’s security deposit in partial satisfaction for the monetary award.

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

No testimony was provided to the hearing by the tenant regarding his application. This application is therefore dismissed.

Conclusion

I issue a Monetary Order of \$575.00 in favour of the landlord as follows:

Item	Amount
Unpaid Rent for June 2017	\$1,100.00

Less Security Deposit	(-625.00)
Return of Filing Fee	100.00
Total =	\$575.00

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

The tenant's application 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: March 14, 2018

Residential Tenancy Branch