



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAPLE AND WEST THIRD JOINT VENTURES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCLS FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, to retain the tenant's security deposit, and to recover the cost of the filing fee.

The tenant, an agent for the landlord ("agent") and a property manager for the landlord ("property manager") appeared at the teleconference hearing and gave affirmed testimony. The parties were advised of the hearing process and were given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

Neither party expressed any concerns with documentary evidence. Both parties indicated that they had received and reviewed the documentary evidence from the other party.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the fixed term tenancy agreement was submitted in evidence. The tenancy began on January 1, 2017 and was scheduled to revert to a month to month tenancy after December 31, 2017. The tenant paid a security deposit of \$800.00 at the start of the tenancy, which the landlord continues to hold and has accrued \$0.00 in interest to date. The parties agreed that the tenant vacated the rental unit on September 30, 2017.

The landlord has claimed for \$1,600.00 loss of October 2017 rent. The landlord testified that on September 12, 2017 he received notice that the tenant's September rent cheque was had "bounced" as it was returned as NSF ("Non-Sufficient Funds") from the bank. The tenant did not dispute that his rent cheque bounced. The tenant stated that he was "really struggling". The landlord testified that the tenant did not provide written notice to end the tenancy and made the decision to vacate the rental unit on September 30, 2017. While the tenant claims he placed a written notice under the manager's door on September 12, 2017, the tenant did not have a copy of the written notice submitted in evidence and the landlord stated that the door would have been open as the manager is in the office Monday to Friday from 8:30 a.m. The landlord also stated that they have twelve employees and none of them stated that they received a written notice from the tenant. The landlord confirmed that while September rent was eventually paid by the tenant on October 2, 2017, the landlord suffered a loss of October rent due to the tenant failing to provide written notice and the landlord is seeking \$1,600.00 as a result.

Analysis

Based on the documentary evidence and the undisputed testimony of the agent, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In the matter before me, the landlord bears the burden of proof to prove all four parts of the above-noted test for damages or loss.

Loss of rent – Section 45(2) of the *Act* applies and states:

Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[My emphasis added]

Although I am not satisfied that the tenant provided written notice, I find it is not necessary to determine whether written notice was given as the tenant is not authorized to end a fixed term tenancy by giving written notice earlier than December 31, 2017 as that was the end date of the fixed term tenancy. Therefore, I find the tenant breached section 45(2) of the *Act* by ending a fixed term tenancy in a manner not authorized under the *Act* as there is no evidence before me that the landlord agreed in writing to release the tenant from the fixed term tenancy. Therefore, I find the landlord has met the burden of proof and is owed loss of October 2017 rent in the amount of **\$1,600.00** as claimed.

As the landlord's application was successful, I also grant the landlord **\$100.00** for the cost of the filing fee pursuant to section 72 of the *Act*.

Therefore, I find the landlord has established a total monetary claim of **\$1,700.00** comprised of \$1,600.00 in loss of rent plus the \$100.00 filing fee. I authorize the landlord to retain the tenant's full security deposit of \$800.00 which has accrued \$0.00 in interest in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$900.00**.

Conclusion

The landlord's application is successful.

The landlord has established a total monetary claim of \$1,700.00 as described above. The landlord has been authorized to retain the tenant's full security deposit of \$800.00 in partial satisfaction of their claim. The landlord has been granted a monetary order under section 67 for the balance due by the tenant to the landlord in the amount of \$900.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 22, 2018

Residential Tenancy Branch