



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cyclone Holdings Ltd
and [Tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on May 23, 2018. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- permission to retain the security deposit to offset the rent she is owed; and,
- to recover the filing fee from the Tenant for the cost of this application.

The Landlord's agent and the Tenant both attended the hearing and provided testimony. Both parties confirmed receipt of each other's documentary evidence. However, there was a letter in the Landlord's evidence package which was not provided to me for the hearing. As such, I will not consider this letter any further, as it was not provided to me in accordance with the rules of procedure.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

Background and Evidence

The Landlord stated that she is seeking compensation because the Tenant failed to give proper notice when she moved out. Both parties agree that the Tenant gave the Landlord written notice on September 2, 2017, stating that she would be vacating the rental unit as of the end of September 2017. A condition inspection report was done and the Tenants moved out on September 30, 2017.

Both parties agree that the Landlord holds a security deposit in the amount of \$425.00 and a pet deposit in the amount of \$435.50, totalling \$860.50. Both parties also agree that monthly rent was \$896.00 at the time the tenancy ended and that rent is due on the first of the month.

The Landlord stated that the same week she got written notice from the Tenant, an ad was posted to try and re-rent the unit. This ad was posted the same week (week of September 2, 2017). The Landlord stated that she was not able to re-rent the unit until October 20, 2017, so she is seeking to recover those 20 days of rent from the Tenants because they did not give at least one month written notice prior to leaving.

The Tenant stated that the Landlord seemed to be okay with the short notice, and she is surprised by this application because there was no indicated at the time that the Landlord took issue with the written notice being late. The Tenant also stated that the Landlord did some work on the rental unit while it was vacant and they should not have to pay for that time as it was probably not rentable anyways.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

The Landlord is seeking to recover lost rent for the period from October 1, 2017 until October 20, 2017, the period of time that the unit was vacant. I turn to section 45 of the Act:

Tenant's notice

- 45** (1) A tenant may end a periodic 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, and
 - (b) 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.

I find the Tenant breached section 45 of the Act by failing to give at least one month written notice to the Landlord. As such, I find the Landlord is entitled to some compensation. However, I have also considered that the Tenant indicated that the Landlord was doing renovations (removal of carpets etc.) to the rental unit after they moved out, and the unit wasn't rentable during that period. The Landlord did not speak to this point during the hearing. After considering the evidence before me, I find the Landlord has not sufficiently demonstrated what steps were taken from September 2, 2017, (the date they got written notice) until October 20, 2017, (the date it was re-rented), to find new tenants and mitigate any potential loss they were facing. There is no evidence to show when, and how many showings took place, and when the new tenancy agreement was signed.

In the absence of sufficient evidence to show the Landlord properly mitigated their loss, I find the Landlord is not entitled to the full amount of their claim. However, given the Tenant did breach section 45 of the Act, I find a nominal amount is more reasonable in the situation. In summary, I find the Landlord is entitled to a nominal award of \$100.00.

Since the Landlord was partially successful in this application, I award her the recovery of the filing fee (\$100.00), pursuant to section 72 of the Act. In total, I award the Landlord \$200.00.

I authorize the Landlord to retain this \$200.00 from the Tenants' \$860.50 deposit (security/pet deposit) in full satisfaction of the money owed, which I find leaves a security deposit balance of \$660.50, which must be returned to the Tenants. I will issue a monetary order for the Tenants for this amount.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$660.50**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: May 24, 2018

Residential Tenancy Branch