



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S

Introduction

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

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlords gave the following testimony. The one year fixed term tenancy began on September 15, 2017 and was to end on August 15, 2018. The tenants were obligated to pay \$1500.00 per month in rent on the 15th of each month and in advance and at the outset of the tenancy, the tenants paid a \$750.00 security deposit which the landlord still holds. The landlord testified that he received a letter from the tenants on March 5, 2018 that they would be moving out by March 15, 2018. The landlord testified that the tenants claimed that the reason for moving was that there was too much noise coming from them, which they dispute. The landlords testified that they have a three year old child and were only advised on two occasions that it was bothering the tenants. The landlords testified that when they were advised, they corrected the issue immediately. The landlords testified that they were unable to rent the unit until May 1, 2018 and incurred a loss of revenue of \$2250.00. The landlords also seek the recovery of the \$100.00 filing fee.

The tenant gave the following testimony. The tenant testified that the landlords' child would make noise at all hours of the day and night. The tenant testified that this noise occurred at least three times a week. The tenant testified that he became depressed living in the unit with the lack of peace and quiet.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

I find that the landlords and tenants entered into a fixed term tenancy for the period from September 15, 2017 until August 15, 2017.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

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.

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses and liquidated damages to the landlord. In this case, the tenant ended the tenancy on March 5, 2018 with only ten days' notice and five months left on the term. I find that the reason given by the tenant was not sufficient grounds or justification to end the tenancy as outlined in section 45(3) of the Act. I find that the tenant breached the fixed term tenancy agreement without justification. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the Act.

Section 7(1) of the Act establishes that a tenant who does not comply with the Act, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the Act places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the Act to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises after receiving written notice of the tenant's intention to vacate the rental unit. The landlord posted an advertisement in the local

newspaper and several online advertisements. Based on the above, I find that the landlord is entitled to the loss of revenue for March 15, 2018 to April 30, 2018 in the amount of \$2250.00. The landlord is also entitled to the recovery of the \$100.00 filing fee. Although the landlord did not apply to retain the security deposit, applying the offsetting provision under section 72 of the Act, I find that the landlord is entitled to retain the security deposit in partial satisfaction of the claim.

Conclusion

The landlord has established a claim for \$2350.00. I order that the landlord retain the \$750.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1600.00. This order may be filed in the Small Claims 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: May 02, 2018

Residential Tenancy Branch