



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution wherein the Landlords requested monetary compensation from the Tenant for loss of rent, registered mail costs and recovery of the filing fee.

The hearing was conducted by teleconference on May 9, 2018 at 1:00 p.m. Only the Landlord, D.M., called into the hearing. He gave affirmed testimony and was provided the opportunity to present the Landlords' evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 1:14 p.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

As the Tenant did not call in, service of the Landlords' hearing package was considered. The Landlord testified that they served the Tenant with the Notice of Hearing and the Application on October 14, 2017 by registered mail to the forwarding address provided by the Tenant. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of October 19, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord/Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation from the Tenants?
2. Should the Landlords recover the filing fee?

Background and Evidence

The Landlord, D.M., testified that the Tenant contacted him on September 17, 2017 regarding renting the rental unit. He further testified that she attended on September 22, 2017, agreed to rent the unit for a six month fixed term at \$1,600.00 per month and also provided a security deposit of \$800.00.

The Landlord issued a receipt for payment of the first month's rent as well as the security deposit upon which he also wrote:

“deposit \$800.00 & Oct rent for [address of rental]
6 month [indiscernible] with possible extension.
Possession not before Sept 26, 2017.”

[Reproduced as written]

The Landlord submitted that the above established a six month fixed term tenancy.

The Landlord stated that the tenancy was to begin on October 1, 2017, although there was the possibility the Tenant could move in on September 26, 2017 in the event the previous tenants were moved out. He stated that on September 25, 2017 the Tenant contacted him and advised him she would not be moving in.

The Landlord testified that he tried to re-rent the unit for October 1st for \$1,600.00 and when he could not, he lowered the price to \$1,550.00 such that he accepted \$50.00 less a month. He entered into a seven month fixed term tenancy (a copy of which was

provided in evidence) and confirmed the new tenants plan to stay for a full year at least. He also noted that he is not permitted to raise the rent earlier than October 1, 2019 such that he will suffer a loss of \$600.00 (\$50.00 per month for a year). This is the basis of his claim for \$600.00.

The Landlord also sought his registered mail costs as well as recovery of the filing fee.

Analysis

After consideration of the undisputed evidence and testimony of the Landlord, and on a balance of probabilities, I find as follows.

Section 16 of the *Residential Tenancy Act* provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenancy ever occupies the rental unit.

In the case before me the parties did not enter into a formal written residential tenancy agreement. However, I accept the Landlord's evidence that they met on September 22, 2017 and discussed the terms of the tenancy which included that the Tenant would rent the rental unit for \$1,600.00 per month and that she would pay a security deposit of \$800.00. The commencement date of the tenancy was either October 1, 2017 or earlier, in the event the existing tenants moved out. According to the Landlord's testimony and the receipt issued for payment of the security deposit and first months' rent, the term of the tenancy was six months. An end date was not specified on the receipt.

Residential Tenancy Branch Policy Guideline 30—Fixed Term Tenancies provides in part as follows:

Section 1 of the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* (the Legislation) defines a fixed term tenancy as a tenancy under a tenancy agreement that specifies the date on which the tenancy ends. In other words, a fixed term tenancy has a definite commencement date and expiry date. Neither party may end a fixed term tenancy early, except under the circumstances described in section C of this guideline.

Section 13(2)(f)(iii) of the *Residential Tenancy Act* further provides that a fixed term tenancy must include the *date on which the term ends*.

While I find the parties entered into an oral tenancy agreement, I am unable to find that the agreement is properly characterized as a fixed term tenancy.

I accept the Landlord's evidence that the Tenant advised him on September 25, 2017 that she would not be moving in. Pursuant to section 45 of the *Act*, the effective date of her notice is October 31, 2017. I therefore find the Landlord is entitled to loss of rent for October 2017. As he rented the rental unit for \$1,550.00 as of October 1, 2017, he suffered a \$50.00 loss. I find, pursuant to section 67 of the *Act*, that the Landlord is entitled to recover this amount from the Tenant.

Section 72 of the *Act* allows for repayment of fees for starting dispute resolution proceedings and charged by the Residential Tenancy Branch. While provisions regarding costs are provided for in Supreme Court Proceedings, they are specifically not included in the *Act*. I conclude that this exclusion is intentional and includes disbursement costs such as registered mailing costs. The Landlord was informed during the hearing that registered mail costs are not recoverable under the *Residential Tenancy Act* and I therefore dismiss his claim for related compensation.

Although the Landlord was not successful in his claim for loss of rent for 12 months, he is required, pursuant to section 38(1) of the *Act*, to make an application for dispute resolution within 15 days of receipt of the Tenant's forwarding address in writing. I therefore find that he is entitled to recover the filing fee.

Conclusion

The Landlord is entitled to monetary compensation in the amount of **\$150.00** representing loss of rent for October 2017 and recovery of the filing fee. The Landlord is authorized pursuant to section 38 and 72 of the *Act* to retain \$150.00 of the Tenant's security deposit as payment of this amount. The balance of the Tenant's security deposit is to be returned to her.

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 11, 2018

Residential Tenancy Branch