



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for a monetary order for loss or other money owed, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

The landlord's agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on November 2, 2017, Canada post tracking numbers were provided as evidence of service. The agent stated that the packages were successfully delivered.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act.

The landlord's agent stated that they received an email from the tenants stating that they were not disputing the claim and would not be attending the hearing as they have moved out of the country.

The landlord's agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for loss or money owed?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy which began on June 1, 2017 and was to expire on May 31, 2018. Rent in the amount of \$1,090.00 was payable on the first of each month. The tenants paid a security deposit of \$545.00. The tenancy ended on September 30, 2017.

The landlord claims as follows:

a.	Loss of rent for October 2017	\$1,090.00
b.	Liquidated damages	\$ 877.80
	Filing fee	\$ 100.00
	Total claimed	\$2,067.80

The landlord's agent testified that the tenants breached the fixed term tenancy earlier than the Act allowed as they moved out on September 30, 2017. The agent stated that the tenants just left without giving them sufficient time to locate a new renter for October 2017. The agent stated that they found a new renter and their tenancy commenced on November 1, 2017. The landlord seeks to recover loss of rent for October 2017, in the amount of \$1,090.00.

The landlord's agent testified that the tenancy agreement has a liquidated damages clause, which is for the cost associated with re-renting the premises. The landlord seeks to recover the liquidated damages in the amount of \$877.80.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice (fixed term)

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,

...

In this case, the evidence of the landlord's agent was that the tenants breached the fixed term tenancy by vacating the premises on September 30, 2017. However, under the Act the tenants were not entitled to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have breached section 45(2) of the Act as the earliest date they could have legally ended the tenancy was May 31, 2018, as stated in the tenancy agreement. Therefore, I find the landlord is entitled to recover loss of rent for October 2017, in the amount of **\$1,090.00**.

Since I have found the tenants breached the fixed term agreement by ending their tenancy early, I find the landlord is entitled to recover the liquidated damages clause specified in the tenancy agreement. Therefore, I find the landlord is entitled to recover the amount of **\$877.80**.

I find that the landlord has established a total monetary claim of **\$2,067.80** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$545.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,522.80**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: June 04, 2018

Residential Tenancy Branch