



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DELANEY PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC FF

Introduction

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

- a Monetary Order pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the landlord and the tenants attended the hearing. The landlord was represented at the hearing by agent M.G., while tenant V.H. made submissions on behalf of the tenants. Both parties were given a full opportunity to be heard, to present their testimony and to make submissions.

The tenant confirmed receipt of the landlord's Application for Dispute Resolution and evidentiary package and submitted her own evidentiary package to the hearing. I find that the tenant was duly served with the landlord's application, and both parties were in receipt of each other's evidentiary packages.

Issue(s) to be Decided

Can the landlord recover a monetary award?

Is the landlord entitled to a return of the filing fee?

Background and Evidence

Undisputed testimony provided at the hearing by the landlord explained that this tenancy began on September 1, 2016. This was a fixed-term tenancy that was set to expire on August 31, 2017. Rent was \$1,750.00 per month, with security and pet deposits of \$875.00 each, returned to the tenants following the conclusion of the tenancy.

The landlord said that he was seeking a monetary award of \$935.00. The landlord said that the tenants vacated the rental unit prior to the expiration of their fixed-term tenancy with their final day of occupation being July 8, 2017. The landlord said that the tenants informed him that they would be leaving the rental unit before the expiration of their fixed-term tenancy, and that he was looking to recover rent and utilities for half of July 2017, as the tenants had only paid rent and utilities for the first two weeks. Testimony provided by the landlord explained that following the tenants' departure from the rental unit, new occupants began living in the suite on July 15, 2017.

The tenants disputed that any money was owed in relation to the rental unit. Tenant V.H. provided lengthy submissions detailing numerous issues she had with the rental unit.

Analysis

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

After considering the oral testimony of both the landlord and tenant, I find little evidence was presented at the hearing that the landlord suffered a loss as a result of the tenants' early move-out. Thanks to the landlord's efforts, a new tenant was immediately found for the rental unit. No financial loss was suffered by the landlord as rent as paid by this new occupant starting on July 15, 2017.

The issue of compensation is examined in detail in section 67 of the *Act*. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. **The claimant must prove the existence of the damage/loss**, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, **the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage**. In this case, the onus was on the landlords to prove entitlement to a claim for a monetary award. I find that the landlord has not suffered any loss as a result of the tenants' actions and therefore dismiss his application for a monetary award without leave to reapply.

As the landlord was unsuccessful in his application, he must bear the cost of his own filing fee.

Conclusion

The landlord's application for a monetary award and a return of the filing fee is dismissed without leave to reapply.

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: July 10, 2018

Residential Tenancy Branch