



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

Pursuant to section 9.1 (1) of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- a Monetary Order for damages or compensation pursuant to section 67 of the *Act*;
- an Order allowing the landlord to retain the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Only the agent for the landlord LA appeared at the hearing. The tenant did not attend the hearing, although I left the teleconference connection open until 1:55 PM to enable the tenant to call into the hearing scheduled for 1:30 PM. 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's agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenant was sent the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package") and evidence by way of Registered Mail on December 29, 2017. The Canada Post tracking number was provided for the hearing and is noted on the first page of this Decision. In accordance with sections 89 and 90 of the *Act*, I find the tenant deemed to be served with the landlord's dispute resolution hearing package and evidence on January 3, 2018, five days after their mailing.

The hearing process was explained and the landlord's agent was given an opportunity to ask any questions about the process. The landlord's agent was given a full opportunity to present affirmed evidence, and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages or compensation, pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit in partial satisfaction of the monetary award, pursuant to section 38 of the *Act*?

Is the landlord entitled to payment of the filing fee of \$100.00, pursuant to section 72 of the *Act*?

Background and Evidence

This tenancy began when the tenant took occupation of the premises on July 1, 2017 and concluded when the tenant vacated the premises on October 1, 2017.

There was a written tenancy agreement filed that stated that the tenancy was to run from July 1, 2017 to March 21, 2018. Rent was payable at the rate of \$1,075.00 per month on the first day of each month. The tenant agreed to pay a security deposit of \$537.50 and this was received by the landlord on June 29, 2017.

There is a 5 page Addendum to the written tenancy agreement that the tenant signed and which has the tenant's initials on each page. Paragraph 7 states in part as follows:

“Should the tenancy agreement be terminated for any reason prior to the agreed length of stay...will require the renter to pay any replacement renter “location fee”. This is the equivalent to ½ month's rent”.

On September 9, 2017, the tenant sent the landlord's agent an email to say that he had been relocated to another community for work so he would be moving out as of October 1, 2017. From that point forward it was understood that the tenant would be leaving so the landlord began to show the premises to prospective new tenants.

A move in inspection was done on June 29, 2017 with a written report prepared. A move out inspection was set for October 1, 2017, and the tenant failed to attend. A second move out inspection was set for October 6, 2017, and again the tenant failed to attend and only sent his girlfriend to drop off the keys.

The tenant's forwarding address was provided to the landlord by way of a letter dated December 12, 2017. The landlord's agent gave uncontradicted testimony that this letter was received on December 19, 2017. This application was filed by the landlord on December 22, 2017.

Analysis

The tenant breached the terms of the fixed term tenancy agreement by vacating the premises six months before the end of the term. Although he may have not fully appreciated the consequences of his actions he had a written contract which he signed.

Either party to a tenancy may bring an application for damages under section 67 of the Act which states:

Without limiting the general authority in section 62 (3), if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

With respect to the claim by the landlord for the sum of \$537.50, I find that the landlord has provided evidence sufficient to establish all four points set out above. There was a loss; the loss resulted from a violation of the tenancy agreement by the tenant; the value of the loss is clear; the landlord had new tenants move as soon as they could be found. Accordingly, there will be an order for damages of \$ 537.50 pursuant to section 67 of the Act.

As the landlord was successful on this application it is entitled to recover the filing fee of \$100.00 from the tenant.

The situation with payment of the security deposit is the final issue to resolve. I have found that the landlord received the sum of \$537.50 as the security deposit.

Section 38 of the *Act* establishes the provisions regarding the return of the tenant's security deposit and/or pet damage deposit. Subsection 38(1) of the *Act* reads as follows:

38 (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit

RTB Policy Guideline 17, paragraph 10 states:

The landlord has fifteen days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit plus interest to the tenant.

Here the landlord has met the requirements of section 38 (1) as the application was filed within the 15-day time period after the landlord received the forwarding address of the tenant.

There was no suggestion that the landlord failed to perform incoming or outgoing condition inspections in accordance with the *Act*, rather the evidence was that these had in fact occurred and/or the tenant had been provided with the required opportunities and failed to attend. Therefore, the landlord has not extinguished the right to claim

against the security deposit for damages, pursuant to sections 24(2) and 36(2) of the *Act*.

As a result, the landlord is entitled to retain the security deposit of \$537.50 and to apply this as against the monies owing by the tenant.

Conclusion

The amount payable by the tenant to the landlord for damages is \$537.50 – the exact amount of the security deposit that the landlord may retain and apply against the debt.

The landlord is also entitled to repayment of the \$100.00 filing fee by the tenant. The landlord is given a formal Order for the payment of \$100.00 and the tenant must be served with a copy of this Order as soon as possible. Should the tenant fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: July 12, 2018

Residential Tenancy Branch