



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCLS FFL

Introduction

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

- a Monetary Order for unpaid rent and damages pursuant to section 67;; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this teleconference hearing, which lasted approximately 15 minutes. The line remained open throughout the hearing. The corporate landlord was represented by its agent SW (the "landlord") who was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the application for dispute resolution dated December 7, 2017 and evidence by registered mail sent to a forwarding address provided by the tenant on December 8, 2017. The landlord submitted a Canada Post tracking number as evidence of service. Based on the undisputed evidence I find that the tenant was deemed served with the landlord's application and evidence in accordance with sections 88, 89 and 90 of the Act on December 13, 2017, five days after mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

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

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This fixed term tenancy began in May, 2017 and was scheduled to end April, 2018. The monthly rent for this tenancy was \$1,200.00. A security deposit of \$600.00 was paid by the tenant and still held by the landlord.

The tenant gave notice to end the tenancy on November 14, 2017. The tenant vacated the rental unit at the end of November. While the landlord posted the rental unit they were only able to find a new tenant for January, 2018. The landlord therefore seeks a monetary award for the December, 2017 rent of \$1,200.00.

The tenancy agreement provides that liquidated damage in the amount of \$650.00 will be charged to the tenant for an early end of the lease. The landlord submitted an invoice showing the breakdown of the work incurred due to the breach of lease. The landlord seeks the amount of \$650.00 as provided in the signed tenancy agreement.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I accept the landlord's undisputed evidence that the tenant first gave notice on November 14, 2017 of their intention to end the tenancy. I find that pursuant to sections 45(2)(a) and 26 the tenant was obligated to pay rent in the amount of \$1,200.00 on December 1, 2017 but failed to do so. I therefore find that the landlord is entitled to a monetary award in the amount of \$1,200.00.

I accept the evidence that the tenancy agreement provides that liquidated damage in the amount of \$650.00 will be charged for early termination of the fixed term lease. I therefore find that the landlord is entitled to recover the \$650.00 for liquidated damages. As the landlord's application was successful the landlord is also entitled to recover the \$100.00 filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$600.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,400.00 under the following terms:

| Item | Amount |
|-----------------------------|-------------------|
| Unpaid Rent December, 2017 | \$1,200.00 |
| Liquidated Damage | \$650.00 |
| Filing Fees | \$100.00 |
| Less Security Deposit | -\$600.00 |
| Total Monetary Order | \$1,400.00 |

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this 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 24, 2018

Residential Tenancy Branch