



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on June 19, 2018. The Landlords applied for a monetary order for unpaid rent, permission to retain the security deposit and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord's Property Manager attended the hearing and was affirmed to be truthful in her testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Property Manager testified the Application for Dispute Resolution, and Notice of Hearing had been sent to the Tenant by registered mail on June 22, 2018, a Canada post tracking number was provided as evidence of service. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days later. I find that the Tenant has been duly served in accordance with the *Act*.

The Property Manager was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The Property Manager testified that the tenancy began on April 1, 2017, as a one-year fixed term tenancy, which rolled into a month to month tenancy at the end of the fixed term. Rent in the amount of \$1,000.00 was to be paid by the first day of each month and the Landlords had been given a \$500.00 security deposit. The Property Manager provided a copy of the tenancy agreement into documentary evidence.

The Property Manager testified that the Tenants contacted her on May 21, 2018, and gave her verbal notice that they would be moving out on June 1, 2018. The Property Manager testified that the Tenants moved out of the rental unit on June 6, 2018, and that the move-out had not been completed inspection, due to her feeling uncomfortable with the Tenants.

The Property Manager testified that she is only seeking the unpaid rent for June 2018, in the amount of \$900.00. The Property Manager testified that the Landlord is only seeking \$900.00 in outstanding rent for June 2018, as the Tenants had been awarded a one-time rent reduction of \$100.00, in a previous decision from this office. The Property Manager provided the file number of the previous hearing into evidence, and that number is recorded on the style of cause page of this decision.

Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities that:

Section 45(1)(a) of the *Act* states that a tenant cannot end a tenancy agreement without giving the landlord at least one month's notice.

Tenant's notice

45 (1) *A tenant may end a periodic 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, and*
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement*

In this case, I accept the undisputed testimony of the Property Manager that she received notice from the Tenants on May 21, 2018, that they would be ending their tenancy as of June 1, 2018. I also accept the testimony of the Property Manager that the Tenants returned possession of the rental unit to the Landlord on June 6, 2018.

Pursuant to section 45 of the *Act*, I find that this tenancy could not have ended in accordance with the *Act* until June 30, 2018. I find that the Tenants failed to comply with the *Act* when they gave short notice to the Landlord to end the tenancy as of June 1, 2018.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenant’s breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that they took reasonable steps to minimize

their losses due to the Tenant's breach. Therefore, I find that the Landlord has established an entitlement to a recovery of their loss of rental income for June 2018, in the amount of \$900.00.

Additionally, I accept the testimony of the Property Manager, that the move-out inspection had not been completed. Section 36 of the *Act*, lays out the consequence of a Landlord not meeting the inspection report requirements under the *Act*.

Consequences for tenant and landlord if report requirements not met

- 36** (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if
- (a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and
 - (b) the tenant has not participated on either occasion.
- (2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
- (a) does not comply with section 35 (2) *[2 opportunities for inspection]*,
 - (b) having complied with section 35 (2), does not participate on either occasion, or
 - (c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the Landlord breached section 35 of the *Act* by not completed the move-out inspection as required, and has, therefore, extinguished the right to file a claim against a security deposit for damage to residential property. However, I find that the Landlord has filed this application for the recovery of unpaid rent and not damage to the rental property and is therefore permitted to make a claim against the security deposit. Accordingly, I grant permission to the Landlord to retain the security deposit in partial satisfaction of the above award.

As the Landlord has been successful in this application, I also find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

Therefore, I grant the Landlord a Monetary Order in the amount of \$500.00, comprised of \$900.00 for June 2018 rent, \$100.00 for the recovery of the filing fee for this application, less the \$500.00 the Landlord is holding as a security deposit.

Conclusion

I find for the Landlord under sections 38, 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$500.00**. The Landlord is provided with this Order in the above terms, and the Tenants 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: October 5, 2018

Residential Tenancy Branch