



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On June 21, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for compensation, to apply the security deposit to the claim and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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

Should the Landlord receive a Monetary Order for compensation and apply the security deposit to the claim, in accordance with Section 67 and 72 of the Act?

Should the Landlord recover the costs of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord and the Tenant agreed on the following terms of the tenancy:

The one-year, fixed term tenancy began on October 1, 2017 with an end date of September 30, 2018. The monthly rent was \$2,500.00 and due on the first of each month. The Landlord collected a security deposit of \$1,250.00. After giving notice, the Tenants moved out of the rental unit by May 31, 2018 and as the rental unit had not been rented out by June, paid the rent for June 2018. The Landlord retained \$700.00 of the security deposit and returned \$550.00 to the Tenants.

Landlord's Evidence:

The Landlord testified that she rented her home out to the Tenants with the plan of moving back into the rental unit after one year. When the Tenants provided her with notice that they wanted to break the lease, she immediately arranged a management company to assist her in finding new tenants as she was living out of town.

The Landlord submitted detailed evidence to demonstrate that she engaged a management company and that the rental unit was listed as of April 25, 2018. The Landlord acknowledged that the rental unit was initially advertised for \$100.00 more than the Tenants were paying; however, she also documented that the price of the rental unit was lowered on a regular basis. So much so, that two weeks prior to the Tenants moving out of the unit, it was being advertised for \$2,350.00.

The Landlord stated that the initial search for new tenants did not proceed as quickly as she would have liked and that is why she continually worked with the management company to lower the rent and attempt to arrange more showings. The Landlord struggled with the term of the rental as she had initially wanted to move back in to the unit at the end of September but found that she would need to advertise the unit for at least six months availability to attract new tenants. The Landlord also advertised the rental unit on various websites to complement the management company's efforts.

The Landlord testified that new tenants were found for July 1, 2018 and an agreement established to pay \$2,300.00 a month for rent. The Landlord is claiming compensation for her rental losses of \$200.00 for the months of July, August and September 2018, for a total of \$600.00. The Landlord is also claiming compensation for the filing fee for this Application. As the Landlord made a claim for a total of \$700.00 against the Tenants' security deposit, she returned the balance of \$550.00.

The Landlord stated that she had to pay the management company a fee of \$500.00 to find new tenants; however, she is only claiming the loss of rent.

Tenant's Evidence:

The Tenant testified that his main issue is that the Tenants gave the Landlord notice that they were moving on April 18, 2018 via email and by the time they moved out of the rental unit on May 31, 2018, there had only been one showing.

The Tenant stated that the Landlord did not mitigate her losses and felt that if the Landlord had posted the rental unit at a lower price earlier, that they may not have had to pay June's rent.

The Tenant acknowledged that the Landlord arranged the management company and started advertising the rental unit quickly. He stated that if there were only a few responses to the advertisements, that the management company should have lowered the price or sought other means to attract tenants in a timelier fashion.

Analysis

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the uncontested testimony and evidence of the Landlord that the Tenants had entered a fixed term tenancy until September 30, 2018 and were responsible to pay \$2,500.00 of monthly rent until that time. The Landlord also gave undisputed testimony that, after the Tenants moved out of the rental unit early, she established a new tenancy as of July 1, 2018 for the monthly rent of \$2,300.00. I find that the Landlord has established a loss of \$600.00 in rental income as a result of the Tenants violating their Tenancy Agreement.

Before awarding a monetary claim to the Landlord, I have to consider Section 7(2) of the Act that states a Landlord who claims compensation for damage or loss that results from the Tenants' non-compliance with their Tenancy Agreement must do whatever is reasonable to minimize the damage or loss.

I would normally have found that the Tenant's concerns that the original rental price of the advertised rental unit may have negatively impacted the Landlord's efforts in mitigation. However, I find that the Landlord, through her immediate efforts to advertise the rental unit and responsive actions to lower the price of the rent showed good faith and demonstrated that the Landlord made reasonable efforts to minimize her losses of rental income due to the Tenants early termination of the fixed term tenancy.

I uphold the Landlord's claim and find that the Landlord has established a monetary claim in the amount of \$700.00, which includes \$600.00 in compensation for lost rent and the \$100.00 in compensation for the filing fee for this Application for Dispute Resolution. In accordance with Section 67 and 72 of the Act, I authorize the Landlord to retain the \$700.00 from the Tenants' security deposit. As the Landlord has already retained this amount and returned the balance of the security deposit to the Tenants, I find that this Application is fully satisfied and is now closed.

Conclusion

I authorize the Landlord to retain the \$700.00 in compensation for rental losses and the filing fee from the Tenants' security deposit, in accordance with Section 67 and 72 of the Act.

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 17, 2018

Residential Tenancy Branch