



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

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

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on July 21, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. As the tenant also confirmed that they had received the landlord's written evidence, I find that the landlord's written evidence was served in accordance with section 88 of the *Act*.

The landlord said that they had not received any written evidence from the tenant. Although the tenant provided written evidence for this hearing to the Residential Tenancy Branch, the tenant said that they did not send a copy of this evidence to the landlord for this hearing. Instead, the tenant said that they had provided this same package of written evidence to the landlord for a May 2018 hearing of the tenant's own application, noted at the beginning of this decision. As the landlord said that they had not received that written evidence and the tenant is responsible for sending the applicant a copy of any written evidence upon which the tenant intends to rely for each application considered by the Residential Tenancy Branch, I advised the parties that I could not consider the tenant's written evidence as it had not been served to the landlord in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The parties signed a month-to-month tenancy agreement on September 3, 2017 for a tenancy that was to begin on September 6, 2017. As was noted in the previous decision regarding the tenant's application, monthly rent was set at \$710.00, payable in advance on the first of each month. Although the tenant paid a \$355.00 security deposit on September 6, 2017, a decision of the previous arbitrator noted above returned that deposit to the tenant. That decision also required the landlord to return the \$710.00, the landlord required the tenant to pay for the last month's rent for this tenancy, which the previous arbitrator determined was illegally charged to the tenant and, as a result, had become a part of the security deposit.

This tenancy only lasted until September 26, 2017, by which time the tenant had notified the landlord that they had lost their job and were no longer able to remain in the rental unit. The tenant provided their notice to end this tenancy to the landlord by way of an email on September 25, 2017 and by way of a written notice on September 29, 2017.

The landlord applied for a monetary award of \$710.00, the amount of rent the landlord considers owing for October 2017, due to the tenant's failure to provide adequate notice that she was intending to end her tenancy before the end of September.

The tenant testified that the landlord did not try to rent the rental suite immediately. Rather, the tenant maintained that the landlord placed an advertisement on a popular rental website advising that the rental unit was available as of November 10, 2017, and not immediately. The tenant gave undisputed sworn testimony that the landlord did not respond to the tenant's email asking the landlord to revise the commencement date for prospective renters from November 10, 2017 to a much earlier date. The tenant gave undisputed sworn testimony that the landlord removed the advertisement from that rental website shortly thereafter. The landlord testified that they did not advertise the availability of the rental unit immediately because they considered the tenancy still in place until the end of October because the tenant had not provided adequate notice to end this tenancy.

Analysis

In the previous decision, the arbitrator noted that the tenant had agreed to let the landlord apply \$355.00 from the security deposit towards the tenant's October 2017 rent. The relevant findings determined by the previous arbitrator are as follows:

...I find that the Tenant agreed the Landlord could retain \$355.00 from her deposit towards the October rent; this is evidenced in her email of September 25, 2017...

The case before me most closely resembles “Example C” as the Tenant agreed the Landlord could retain \$355.00 and the Landlord returned some amount to the Tenant.

*Accordingly, the Tenant is entitled to the sum of **\$1,275.00** calculated as follows:*

*\$1,065.00 (total deposits paid)
- \$355.00 (reduction authorized by Tenant)
= \$710.00
x 2 = \$1,420.00 (as per section 38(6))
- \$145.00 (amount actually returned to Tenant)
= \$1,275.00 (amount owing to Tenant)*

*As the Tenant has been substantially successful I also award her recovery of the \$100.00 filing fee for a total of **\$1,375.00**...*

Findings reached by arbitrators appointed pursuant to the *Act* are final and binding. The legal principle of *res judicata* establishes that I cannot interfere with findings already reached by another properly authorized quasi-judicial decision maker such as the previous arbitrator. As such, I find that the landlord has already received compensation of \$355.00 from the tenant's security deposit for rent for October 2017. Thus, the landlord is only able to claim for the remaining one-half of the rent the landlord maintains remains owing for October 2017, \$355.00.

Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent that would have become due in October 2017, the tenant would have needed to provide her notice to end this tenancy before this tenancy even began. As that clearly could not have occurred, I find that the tenant was in breach of their Agreement because they vacated the rental premises prior to the date when they could terminate that Agreement. As such, the landlord is entitled to compensation for losses they incurred as a result of the tenant's failure to comply with the terms of their tenancy Agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

As noted above, the decision of the previous arbitrator who considered the tenant's application regarding this tenancy in May 2018 determined that the tenant allowed the landlord to keep \$355.00 from the tenant's security deposit to be applied to one-half of the rent for October 2017.

With respect to the remaining one-half of October's rent for which the landlord might be eligible for compensation from the tenant, I must also consider the wording of section 7(2) of the *Act*. This section places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I find that the landlord took inadequate measures to attempt to re-rent the premises after the tenant vacated the rental unit on September 26, 2017. The tenant had very clearly advised the landlord that they were no longer residing in this rental unit and encouraged the landlord to advertise its availability to other renters as soon as possible. There is undisputed sworn testimony from both parties that the landlord only advertised the availability of the rental unit as of November 2017. As such, I am not satisfied that the landlord has discharged their duty under section 7(2) of the *Act* to minimize the tenant's exposure to the landlord's rental loss for October 2017.

For these reasons, I dismiss all aspects of the landlord's application.

Conclusion

The landlord's application 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: October 30, 2018

Residential Tenancy Branch