



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDL-S MNRL-S

Introduction

This hearing dealt with the landlords application pursuant to the *Residential Tenancy Act* (“the Act”) for:

- and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord GK attended the hearing by way of conference call, the tenants did not. I waited until 1:40 p.m. to enable the tenants to participate in this scheduled hearing for 1:30 p.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord’s agent testified that the tenants were served with the landlord’s application for dispute resolution hearing package on by way of registered mail on March 12, 2018 to the forwarding address provided by the tenants when they moved out. The landlord provided Canada Post tracking numbers in the hearing. In accordance with sections 89 and 90 of the Act, I find that the tenants were deemed served with the landlord’s application and evidence on March 17, 2018, five days after its registered mailing.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation for losses and money owed?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord GK testified regarding the following facts. This fixed-term tenancy began on September 1, 2017 and was to end on August 31, 2018. Monthly rent was set at \$1,500.00, payable on the first of the month. A security deposit in the amount of \$750.00 was paid by the tenants at the beginning of the tenancy. The landlords purchased the property in December of 2017.

The landlord testified that the tenants gave notice on February 1, 2018 that they wished to move out on February 28, 2018. The tenants moved out on that date despite the fact that no Mutual Agreement was signed.

The landlords originally filed a monetary claim of \$2,250.00 for losses associated with the early end of this tenancy, which was for damage left by the tenants, and for loss of rental income.

The landlord indicated in the hearing that they were amending their claim to keep the security deposit in satisfaction of the loss of rental income. The landlord testified that they were able to re-rent the unit as of March 28, 2018.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) *the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

The landlord provided undisputed evidence at this hearing that the tenants had moved out before the end of this fixed-term tenancy. I find that the tenants had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlords did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to this tenancy. The tenants moved 6 months earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlords is that they were able to re-rent the suite, and are only requesting to keep the security deposit in compensation for their loss. I am satisfied that the landlords had made an effort to mitigate the tenants' exposure to the landlords' monetary loss of rent for the remainder of the tenancy, as is required by section 7(2) of the *Act*. I, therefore, allow the landlords to retain the \$750.00 security deposit in satisfaction of the monetary losses claimed by the landlords. In accordance with the offsetting provisions of section 72 of the *Act* I order the landlords to retain the tenant's security deposit of \$750.00.

As the landlords were successful in their application, I am allowing the landlords to recover the filing fee from the tenants

Conclusion

I order the landlords to retain the tenants' security deposit of \$750.00 in satisfaction of the monetary award for the tenants' failure to comply with sections 44 and 45 of the *Act*.

I issue a Monetary Order in the amount of \$100.00 in the landlords' favour, which allows the landlords to recover the filing fee for this application.

The landlords are provided with this Order in the above terms and the tenants must be served with a copy of this Order as soon as possible. Should the tenants 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: September 28, 2018

Residential Tenancy Branch