



Dispute Resolution Services

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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 February 8, 2018. The Landlord 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.

Both parties attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were 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 parties agreed that the tenancy began on December 1, 2017, as a six-month fixed term tenancy. Rent in the amount of \$900.00 was to be paid by the first day of each month and the Landlord had been given a \$450.00 security deposit. A copy of the tenancy agreement was submitted in to documentary evidence by the Landlord.

The Landlord testified that the Tenant gave her notice to end his tenancy on January 29, 2018, with an effective date of February 1, 2018. Both parties agreed that the Tenant moved out of the rental unit on February 1, 2018, and did not pay rent for February 2018.

The Landlord testified that she began looking for a new renter to take over the rental unit right away, but there was unable to secure a new renter until March 1, 2018. The Landlord is seeking to recover their loss in rental income for February 2018, less the security deposit she is holding.

The Tenant testified that the Landlord had not completed the move-in or move-out inspection as required.

The Landlord testified that she could not recall if the inspection had been completed.

Analysis

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

Section 45(2) of the *Act* states that a tenant cannot end a fixed term tenancy agreement earlier than the date specified in the tenancy agreement as the end of the tenancy.

Tenant's notice

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.

I have reviewed the tenancy agreement, and I find that this tenancy could not have ended before May 31, 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.

I find that the Tenant was in breach of section 45 of the *Act* when he ended his tenancy early on February 1, 2018. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that she took reasonable steps to minimize the losses due to the Tenant’s breach. Therefore, I find that the Landlord has established an entitlement to recover her loss of rental income for February 2018, in the amount of \$900.00.

I accept the testimony of the Tenant that the Landlord didn’t conduct the move-in and move-out inspections as required under *Act*. Section 24 outlines the consequence for a landlord when the inspection requirements are not met.

Consequences for tenant and landlord if report requirements not met

23 (2) The right of a 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 23 (3) [*2 opportunities for inspection*],

(b) having complied with section 23 (3), does not participate on either occasion, or

(c) 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 23 of the *Act* when she did not complete the required move-in inspections of the rental unit. Consequently, I find that the Landlord has extinguished her right to make a claim against the security deposit for damage to the residential property. I find that the Landlord's application is to recover outstanding rent for the rental unit, and is not a claim to recover funds due to damage to residential property. Therefore, the Landlord does have a right to claim against the security deposit, in this case.

I find that the Landlord has established an entitlement to recover her loss of rental income for February 2018. I grant the Landlord an award of \$450.00, comprised of \$900.00 of rent for February, less the \$450.00 the Landlord is holding as a security deposit.

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

I grant the Landlord a monetary order of \$550.00, consisting of \$450.00 in outstanding rent and the recovery of the \$100.00 filing fee for this hearing.

Conclusion

I find for the Landlord under sections 67 and 72 of the *Act*. I grant the Landlord a **Monetary Order** in the amount of **\$550.00**. The Landlord is provided with this Order in the above terms, and 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: September 10, 2018

Residential Tenancy Branch