



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 an application by the landlord for the following:

- A monetary order for unpaid rent pursuant to section 67;
- An order to retain the security deposit pursuant to section 72; and
- Authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants attended. HT appeared as agent for the landlord (“the landlord”). Both parties were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The tenants acknowledged receipt of the Notice of Hearing and all evidentiary materials from the landlord. No issues of service were raised. I find the tenants were duly served in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary order pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The parties agreed as follows:

- They entered into a residential tenancy agreement starting May 1, 2016 for a fixed 6-month term, at the expiry of which the tenancy continued on a month-to-month basis;
- Rent was \$777.00 a month payable on the 2nd day of the month;
- A security deposit of \$375.00 was paid by the tenants at the beginning of the tenancy and is held by the landlord; the tenants have not provided authorization to the landlord to retain the security deposit;
- The tenants provided notice to the landlord by letter of January 16, 2018 that they were vacating the premises on February 28, 2018.
- In the letter of January 16, 2018, the tenants stated in part as follows:

I have sourced a suitable tenant for the space and will have them follow your instructions and fill in an application on [landlord's website] so as to possibly fill the unit for February 1st.

- On January 28, 2018, the tenants left a voice message with the landlords providing names of possible tenants;
- The tenants vacated the premises on January 28, 2018;
- The tenants did not pay rent for the month of February 28, 2018;
- The landlord did not receive rent for the unit for the month of February 2018;
- The landlord brought an Application for Dispute Resolution on February 2, 2018 claiming a monetary order for the rent for February 2018 and authorization to retain the security deposit.

The tenants claimed they are not responsible for rent for the month of February 2018 because they provided names to the landlord of people willing to move in right away. As well, they testified the rental market had such a low vacancy rate, that replacement tenants should have been located immediately by the landlord.

In a letter of reply dated January 30, 2018, a copy of which was submitted as evidence, the landlord replied,

“We have attempted to contact the individuals noted to do an application and screening for suitability. We have not yet accepted a tenant for your unit [address] and anticipate, as [landlord] explained yesterday, that you will remit your rent payment for February on or before the 1st.”

Should we find a suitable applicant for occupancy prior to the end of February the pro-rated rent will be calculated and returned to you. Please do not bother sending us any further names or contacts as we have our ads running and will vet any prospective tenants through that avenue.”

[as written]

The tenants provided copies of texts and letters submitted after the January 30, 2018 letter in which they testified the landlord was provided with contacts for suitable replacement tenants. They testified the landlord was “deliberately ignoring [our] suggestions [for new tenants]” and as well acted “uncooperatively and unprofessionally”.

The landlord stated the tenants are responsible to pay rent for February 2018 based upon the tenants’ own notice of January 16, 2018. The landlord acknowledged a willingness to attempt to locate a suitable replacement tenant but stated they were not under any obligation to do so.

In any event, the landlord testified that all persons referred by the tenants were contacted and were unsuitable for occupation. The landlord stated a new tenant moved in to the unit on March 1, 2018 after the landlord’s normal channels of advertising and screening of applicants.

Analysis

I have reviewed all documentary evidence and testimony.

I find the tenants gave notice to the landlord on January 16, 2018 they were leaving the rental unit on February 28, 2018.

The tenants are required to pay rent for the month of February 2018 further to section 45 of the *Act* which states:

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.

The landlord in this case did not relieve the tenants of their obligation to pay rent for the month of February 2018. Instead, the landlord clearly informed the tenants in their letter of January 30, 2018 the tenants were responsible for rent for February 2018. The landlord merely agreed to consider suggestions of the tenants and to reimburse the tenants *if* a suitable tenant were located.

I therefore find the tenants are responsible to pay the landlord rent for the month of February 2018 in the amount of \$777.00. I award the landlord a monetary order in this amount.

As the landlord has been successful in this application, I grant the landlord a monetary order in the amount of \$100.00 for reimbursement of the filing fee.

Further to the offsetting provisions of section 72, I allow the landlord to retain the security deposit.

I grant the landlord a monetary order in the amount of **\$502.00** calculated as follows:

ITEM	AMOUNT
Rent outstanding for February 2018	\$777.00
Reimbursement of the filing fee	\$100.00
(Less security deposit)	(\$375.00)
Monetary Order Landlord	\$502.00

Conclusion

I grant the landlord a monetary order in the amount of **\$502.00**.

This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be 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 17, 2018

Residential Tenancy Branch