



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNRL-S

Introduction

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

- and a monetary order for money owed or compensation loss or money owed 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 attended the hearing by way of conference call, the tenant did not. I waited until 1:40 p.m. to enable the tenant 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 testified that the tenant was served with the landlord's application for dispute resolution hearing package on March 7, 2018, by way of registered mail to the forwarding address provided by the tenant. The landlord provided a Canada Post tracking number during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on March 12, 2018, five days after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for loss or money owed for this tenancy?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This fixed term tenancy began on September 1, 2017 with monthly rent set at \$2,200.00. The landlord collected a security deposit in the amount of \$1,100.00, which they still hold. This was a fixed term tenancy which was to end on August 31, 2018. The tenant moved out on February 28, 2018 prior to the end of this tenancy.

The landlord mitigated their losses, and was able to find a new tenant to fill the vacancy. The suite was re-rented for May 1, 2018, for the same monthly rent of \$2,200.00. The landlord is also seeking a monetary order for unpaid utilities in the amount of \$102.86 and \$41.51 for this tenancy. The landlord submitted copies of the utility statements as well as the tenancy agreement in support of his monetary claim.

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's agent provided undisputed, sworn testimony that the tenant 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 landlord did not mutually agree to end this tenancy in writing, nor did the tenant 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 tenant in regards to this tenancy. The tenant moved out 6 months earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenant did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that they were able to re-rent the suite, and the landlord is only claiming \$4,400 for the lost rental income for March and April 2018.

I am satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for March and April 2018, as is required by section 7(2) of the *Act*. Accordingly, I find that the landlord is entitled to a monetary order in the amount of \$4,400.00 in satisfaction of the lost rental income due to the tenant's failure to comply with sections 44 and 45 of the *Act*.

The landlord provided undisputed evidence that the tenant failed to pay the outstanding utilities for this tenancy totalling \$144.37. Accordingly I find that the landlord is entitled to \$144.37 in unpaid utilities for this tenancy.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit plus applicable interest in satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

Conclusion

I issue a Monetary Order in the amount of \$3,544.37 in the landlord's favour under the following terms which allows the landlord to retain the security deposit in satisfaction of the landlord's monetary claim:

Item	Amount
Monetary Claim for Lost Rental Income due to tenant's failure to comply with sections 44 and 45 of the <i>Act</i>	\$4,400.00
Unpaid Utilities	144.37
Filing Fee	100.00
Security Deposit	-1,100.00
Total Monetary Order	\$3,544.37

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: October 2, 2018

Residential Tenancy Branch