



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL -S, FFL

Introduction

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

- a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord testified that the Application for Dispute Resolution (the Application) and evidence was sent to the tenant by way of Canada Post Registered Mail on March 15, 2018. The landlord provided a copy of the Canada Post tracking number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant is deemed served with the Application and evidence on March 20, 2018, five days the registered mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenant's security deposit?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

A copy of a fixed term lease was provided by the landlord showing that this tenancy began on March 01, 2017, with fixed date of February 28, 2018, and a monthly rent of \$700.00. The landlord testified that rent is due on the first day of each month and that no security deposit was paid.

The landlord also provided in evidence a copy of a cheque dated July 01, 2017, in the amount of \$700.00. On the back of the cheque is written 'Last Month Rent'. The landlord has written a note indicating the writing on the back of the cheque was added by the tenant after he received his cancelled cheque and was not written on the landlord's cheque received from the tenant for July 2017 rent.

The landlord gave undisputed affirmed testimony that this tenancy ended when the tenant gave notice in July 2017 by writing "Last Month Rent" on the back of their rent cheque that was cancelled. The landlord testified that the tenant moved out of the rental unit at the end of July 2017 and did not pay any rent for August 2017. The landlord submitted that she suffered a loss of rental income for August 2017, but was able to rent her unit for September 2017. The landlord testified that they are seeking the unpaid rent for August 2017 and to recover the filing fee.

Analysis

As the landlord has testified that there is no security deposit paid for this tenancy, I dismiss their request to retain it, without leave to reapply.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage and that the landlord tried to mitigate the loss. In this case, the onus is on the landlord to prove entitlement to their claim for the monetary award.

Section 45 of the Act establishes that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. I accept the landlord's undisputed testimony and evidence that the tenant did not give proper notice to end their tenancy as I find that the effective date of a notice to end tenancy given in July 2017, for rent due on the first day of each month, is August 31, 2017, pursuant to section 45 of the Act.

For the above reasons I find that the landlord has suffered a loss of rent under section 45 of the Act and I find that the landlord is entitled to a monetary award in the amount of \$700.00 pursuant to section 67 of the Act. As the landlord was successful in their application, they may recover the filing fee related to this application.

Conclusion

Pursuant to section 67 of the Act, I grant a Monetary Order in the landlord's favour in the amount of \$800.00, which allows the landlord to recover unpaid rent for August 2017 and to recover the filing fee for this Application.

The landlord is provided with a Monetary Order in the above terms and 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 10, 2018

Residential Tenancy Branch