



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL-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 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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") as well as the evidence package. In accordance with sections 88 and 89 of the Act, I find that the tenant was duly served with copies of the landlord's Application and written evidence.

The landlord testified that he did not receive the tenant's evidentiary package for this hearing. The tenant testified that she had served the landlord her evidentiary package by way of registered mail, but was unable to provide proof of service for the hearing. The tenant indicated in the hearing that she wished to proceed with the scheduled hearing, and consented to the exclusion of her evidentiary package.

Although the landlord applied for a monetary Order of \$14,000.00 in his initial claim, since he applied he has accrued a further \$10,000.00 in monetary losses for this tenancy.

The tenant indicated in the hearing that she was not opposed to the landlord's request to amend his original application from \$14,000.00 to \$24,000.00 to reflect this additional loss by the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation he applied for?

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

Background and Evidence

This fixed term tenancy was to begin on September 1, 2018, with monthly rent set at \$8,000.00. The landlord collected a security deposit in the amount of \$4,000.00, which the landlord still holds. The tenant signed a tenancy agreement on July 25, 2018 for this tenancy to commence on September 1, 2018, but on August 13, 2018 she gave written notice to the landlord's agent that she wished to terminate this tenancy agreement, which was to end on August 31, 2019. The letter was dated August 8, 2018, but both parties confirmed in the hearing that official written notice to the landlord was not given until August 13, 2018.

The tenant expressed her dissatisfaction with the rental home, and testified that the landlord did not want to discuss her concerns about deficiencies with the home. She is disputing the landlord's monetary claim, stating that he had ample time to find a new tenant, but failed to do so despite the fact that the landlord had continuously advertised the rental unit for rent.

The landlord testified in the hearing that due to the tenant's failure to move in as agreed to, he lost 3 months of lost rental income for the months of September 2018 through to November 2018. The landlord testified that despite his efforts to find a new tenant to fill the vacancy, he was unable to find a new tenant, and moved into the home himself, and mitigated the tenant's exposure to his losses by renting out his previous residence at \$6,000.00 per month.

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, sworn testimony that the tenant ended this 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.

Section 16 of the *Act* states the following:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

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 terminated this tenancy contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that he was unable to re-rent the home, and after unsuccessful efforts to re-rent the home he moved into the residence himself, and had to rent out the home he was living in.

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 September 2018 through to November 2018, as is required by section 7(2) of the *Act*. As stated in the tenant's own evidence, the landlord had placed advertisements for the home to be rented out. Despite these efforts, the landlord was unable to find a new tenant. I am satisfied that the potential loss the tenant could have been exposed to would have been greater for this fixed-term tenancy had the landlord not moved into the home himself, reducing the length of the vacancy due to the tenant's deliberate actions. Accordingly, I find that the landlord is entitled to a monetary order in the amount of \$24,000.00 in satisfaction of the lost rental income due to the tenant's failure to comply with sections 44 and 45 of the *Act*.

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 \$20,100.00 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>	\$24,000.00
Filing Fee	100.00
Security Deposit	-4,000.00
Total Monetary Order	\$20,100.00

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: December 21, 2018

Residential Tenancy Branch