



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNRL-S

Introduction

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72.

Both the landlord’s agents, B.G. and C.C., along with the tenant attended the hearing. All parties present were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The tenant confirmed receipt of the landlord’s application for dispute and evidentiary package after it was sent to him by way of Canada Post Registered Mail. The tenant is found to have been duly served with the landlord’s application for dispute and evidentiary package.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

Background and Evidence

Landlord C.C. testified that this tenancy began on January 5, 2016 and ended on September 1, 2018. Rent was \$595.00 per month at the outset of the tenancy, and rose to \$630.00 per month over the course of the tenancy. A security deposit of \$297.50 collected at the outset of the tenancy continues to be held by the landlord.

The landlord seeks a monetary award of \$1,260.00 representing unpaid rent for August and September 2018. The landlord explained the tenant provided notice of his intention to vacate the property on approximately August 21, 2018. On September 1, 2018 the key to the rental unit was returned to the landlord.

The tenant acknowledged that no rent was paid for August or September 2018 but argued that the unit was in very poor condition. The tenant detailed a rodent infestation which was present in the apartment, along with other alleged shortcomings in the rental unit. The tenant explained he vacated the property on September 1, 2018 because he could no longer reside in a unit which he deemed unfit. The tenant confirmed that he provided notice in late August 2018 of his intention to move from the unit on September 1, 2018.

The landlord said she was unable to re-rent the suite until October 1, 2018 because of the tenant's late notice. The landlord said that upon receiving confirmation from the tenant that he would be vacating the suite, she advertised the apartment on two websites. She said these advertisements ran for approximately ten days.

Analysis

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. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

The landlord has applied for a monetary award of \$1,260.00. This represents unpaid rent for August and September 2018.

During the hearing, the tenant acknowledged not paying rent for the months cited by the landlord but argued that rent should not be due, because of the poor state of the rental unit.

Section 26 of the *Act* states as follows, “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.”

I find the tenant had no right to withhold rent. No evidence was presented that the tenant received an order from an arbitrator with the RTB to withhold any portion of the rent, nor was any evidence presented that the tenant had applied to withhold rent. I therefore order the tenant to pay an award of \$630.00 representing unpaid rent for August 2018.

The second portion of the landlord’s application concerned unpaid rent for September 2018. The parties confirmed that the tenant was no longer in occupation of the suite after September 1, 2018; however, the landlord said they were unable to re-rent the suite until October 1, 2018 and therefore sought compensation for this lost rental income.

Residential Tenancy Policy Guideline #5 states as follows, “Where the tenant breaches a term of the tenancy agreement the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss...this means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The application will not be entitled to recover compensation for loss that could reasonably have been avoided.” While 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.

After having reviewed the evidence submitted and following a consideration of the party’s testimony, I find the tenant has failed to provide sufficient notice to the landlord pursuant to section 45 of the *Act*. Furthermore, I find that the landlord made *reasonable*

efforts to re-rent the suite after having been given notice of the tenant's September 1, 2018 departure on approximately August 21, 2018. I find the landlord's testimony that the suite was listed on two websites for approximately ten days prior to being re-rented to be a reasonable effort. For these reasons, I allow the landlord to recover the unpaid rent for September 2018.

As the landlord was successful in their application they may recover the \$100.00 from the tenant. Using the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction for a return of the monetary award.

Conclusion

I issue a monetary order in the landlord favour in the amount of \$1,062.50 as follows:

Item	Amount
Unpaid Rent for August 2018	\$630.00
Unpaid Rent for September 2018	630.00
Less Security Deposit	(-297.50)
Return of Filing Fee	100.00
Total =	\$1,062.50

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: January 18, 2019

Residential Tenancy Branch