



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COMPLETE RESIDENTIAL PROPERTY MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S MNRL-S

Introduction

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

- A monetary award for unpaid rent, damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. An agent representing both the corporate landlord and the named personal landlord attended (the "landlord") and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the application for dispute resolution dated August 10, 2018 and evidence were sent to the tenants by registered mail. The landlord provided two Canada Post tracking numbers as evidence of service. Based on the evidence I find that the tenants are each deemed to have been sufficiently served with the landlord's application and evidence in accordance with sections 71, 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the security deposit for this tenancy?

Are the landlords entitled to recover the filing fee from the tenants?

Background and Evidence

The landlord gave undisputed evidence regarding the following facts. The parties signed a tenancy agreement on June 14, 2018 for a fixed term tenancy to begin on August 1, 2018. The monthly rent was \$2,495.00 payable on the first of each month. The landlord collected a security deposit of \$1,247.50 which they still hold. The tenant gave notice on July 20, 2018 before moving in to cancel the tenancy.

The landlord seeks a monetary award of \$2,745.00 comprised of the unpaid rent for August, 2018 and liquidated damage of \$250.00 for the cost of re-renting the suite. The landlord submitted a copy of the written tenancy agreement that provides that liquidated damages of \$250.00 apply for an early termination of the fixed term tenancy. The landlord testified that they incurred costs to advertise, show and find a new occupant for the suite. The landlord said that they were able to find a new occupant for September 1, 2018 but were unable to get someone for the month of August, 2018.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that there was a valid tenancy agreement entered by the parties on June 14, 2018. I find that in accordance with the agreement the tenants were obligated to pay monthly rent in the amount of \$2,495.00 by August 1, 2018. The tenants gave notice to end the tenancy on July 20, 2018. Pursuant to section 45(2) of the *Act* a tenant's notice is effective on a date that is no earlier than one month after the landlord receives the notice. Accordingly, I find that the effective date of the tenant's notice was August 31, 2018 and the tenants remained obligated to pay the rent for August, 2018.

I accept the landlord's evidence that the tenancy agreement contains a liquidated damage clause. I find that the amount agreed to by the parties is a genuine pre-estimate of the costs of re-renting the suite and therefore this is an effective clause.

I find that the landlord has provided sufficient evidence of their efforts to re-rent the suite and mitigate their losses. I accept the landlord's evidence that despite their reasonable efforts they were not able to find a new occupant for August, 2018.

Accordingly, I find that the landlords are entitled to a monetary award in the amount of \$2,745.00 as against the tenants for damages and loss.

As the landlords' application was successful the landlords are also entitled to recover their filing fee.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$1,247.50 security deposit in partial satisfaction of the monetary award issued in the landlords' favour.

Conclusion

I issue a monetary order in the landlords' favour in the amount of \$1,597.50 under the following terms:

Item	Amount
Unpaid Rent August 2018	\$2,495.00
Liquidated Damages	\$250.00
Filing Fees	\$100.00
Less Security Deposit	-\$1,247.50
Total Monetary Order	\$1,597.50

The tenants must be served with this Order as soon as possible. Should the tenants 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: January 21, 2019

Residential Tenancy Branch