



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL

Introduction

This hearing, conducted by a conference call, dealt with the landlord's applications under the *Residential Tenancy Act* (the *Act*) seeking a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67 and to recover the filing fees from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to give affirmed testimony, present evidence, make submissions and call witnesses.

As both parties were present service was confirmed. The tenant testified that they received the landlord's application for dispute resolution and evidence. The tenant said they had not served any evidence on the landlord. Based on the undisputed testimony I find that the tenant was served with the landlord's application and evidence in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

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

Background and Evidence

The parties agreed on the following facts. This fixed term tenancy began on April 15, 2018 and was scheduled to end in April 2019. The monthly rent was \$1,400.00 payable on the fifteenth of each month. A security deposit of \$700.00 was paid at the start of the tenancy and is still held by the landlord. The tenancy agreement provides that water is not included in the monthly rent.

The tenant gave notice to the landlord on August 25, 2018 and vacated the rental unit by August 31, 2018. The tenant paid rent through to August 15, 2018. The tenant did not pay any of the water bills during their tenancy. The landlord said that upon the end of the tenancy the landlord chose to sell the rental property and the sale closed in November, 2018.

The tenant acknowledged the utility arrears and that they did not pay rent on August 15, 2018 as required but testified that the rental unit had multiple problems necessitating they move out.

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.

Residential Tenancy Policy Guideline 5 states that while it is not necessary that the party making a claim do everything possible to minimize the loss, some reasonable efforts must be taken. The Guideline further provides that, "Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable."

I find that there was a valid tenancy agreement entered into by the parties for a fixed term tenancy commencing April 15, 2018. Under this tenancy agreement the tenant was obligated to pay \$1,400.00 rent by August 15, 2018. I find that the tenant gave notice to the landlord of their intention to end the tenancy on August 25, 2018. As the tenant gave notice of their intention to end the tenancy on August 25, 2018 the effective date of the end of tenancy was October 14, 2018. Pursuant to the tenancy agreement the tenant was still obligated to pay the full monthly rent of \$1,400.00 by September 15, 2018.

I accept the landlord's evidence that the tenant failed to pay rent on August 15, 2018 and that there is a tenancy arrear of \$1,400.00. I accept the landlord's evidence that the tenant failed to pay the utilities as required under the tenancy agreement and the arrear for utilities is \$260.99. Accordingly, I issue a monetary award in the amount of \$3,060.99 for the rent and utility arrears.

While the landlord claims the amount of the rent for the duration of the fixed term tenancy, I find that there is insufficient evidence that the landlord took reasonable steps in order to mitigate their rental income loss. The landlord chose to sell the rental property so there was no rental income loss from November 2018 onwards. Furthermore, the landlord provided insufficient evidence of their efforts to mitigate their losses. As the tenant gave notice on August 25, 2018 the landlord could have taken steps to find a new occupant and rent the property. The landlord chose not to do so but instead sold the property. Under these circumstances, I find there is insufficient evidence that the landlord suffered any losses or that they took reasonable steps to mitigate any potential losses. Consequently, I dismiss this portion of the landlord's application.

I find that the tenant's evidence of issues with the rental suite are not supported in any documentary evidence and are irrelevant to the matter at hand. The tenant's complaints do not give rise to a right to end the tenancy without providing notice as required under the Act.

As the landlord's application was successful the landlord may recover the \$100.00 filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$700.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour. No interest is payable over this period.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,460.99 under the following terms:

Item	Amount
Unpaid Rent August 2018	\$1,400.00
Unpaid Rent September 2018	\$1,400.00
Unpaid Utilities	\$260.99
Filing Fees	\$100.00
Less Security Deposit	-\$700.00
TOTAL	\$2,460.99

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 17, 2019

Residential Tenancy Branch