



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On September 20, 2018, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting a Monetary Order for Unpaid Rent, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The Tenants testified that they received the documentary evidence from the Landlords and confirmed that they, the Tenants, did not submit any documentary evidence for this hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord and the Tenants agreed on the following terms of the tenancy:

The one-year, fixed term tenancy began on March 15, 2016 and continued on as a month-to-month (periodic) tenancy after March 15, 2017. The monthly rent started out as \$1,600.00 and was increased to \$1,650.00 after the fixed-term ended. According to the Tenancy Agreement, the rent was payable on the first of each month. The Landlord collected and still holds a \$800.00 security deposit.

The Landlord testified that the Tenants provided their notice to end the tenancy via email on August 9, 2018. In the notice, the Tenants stated that they would be vacating the rental unit by September 15, 2018.

The Landlord stated that the Tenants paid \$825.00 for half of September 2018's rent. The Landlord stated they had had conversations with the Tenants about their responsibility to pay the full month of September as the Tenants could not end the tenancy half-way through the month. The Landlord provided text messages that indicated ongoing arguments about this issue between the parties.

The Landlord testified that he flew out to British Columbia on September 8, 2018 to spend some time fixing up the rental unit and interviewing new tenants. The Landlord stated that new tenants were found for October 1, 2018.

The Landlord is claiming a loss of \$850.00 as the Tenants failed to pay the full amount of rent for the month of September 2018.

The Tenants testified that because the tenancy began half-way through the month, that by giving over one month's notice to end the tenancy, that they thought they were acting in good faith and providing the notice as required.

The Tenants stated that they were in communication with the Landlords about when they were leaving and that there was potential to find new tenants sooner than October 1, 2018. The Tenants vacated the rental unit on August 27, 2018.

Analysis

Section 7(1) of the Act establishes that Tenants who do not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply.

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 the responsible 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 Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 45(1) of the Act authorizes Tenants to 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. In this case, the Tenants provided the Landlords their notice on August 9, 2018, to end the tenancy by September 15, 2018. Pursuant to Section 45(1) of the Act, I find that the earliest effective date of the Tenants' notice would be for September 30, 2018.

Based on the testimony and evidence, I find that the Tenants entered into a Tenancy Agreement with the Landlord that required the Tenants to pay monthly rent of \$1,650.00 by the first day of each month and that the Tenants have not paid rent for the last half of September 2018. As the Tenants are required to pay rent pursuant to Section 26(1) of the Act, I find that the Landlord has established a monetary claim in the amount of \$825.00 in outstanding rent (the amount claimed by the Landlord).

I find that the Landlords' Application has merit and that the Landlord should be compensated for the \$100.00 filing fee, in accordance with Section 72 of the Act.

Before awarding a monetary claim to the Landlord, I have to consider Section 7(2) of the Act that states a Landlord or Tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the Regulations or their Tenancy Agreement must do whatever is reasonable to minimize the damage or loss.

I accept the Landlord's testimony that they took time off work to fly out to British Columbia on September 8, 2018, to address their rental unit and find new tenants for October 1, 2018. However, I find that the Landlords failed to provide sufficient evidence as to how they fully mitigated their losses for the last half of September 2018 and what kind of actions they took to find new tenants after receiving the Tenants' notice on August 10, 2018.

I have found that the Landlords have established a monetary claim in the amount of \$925.00, which includes \$825.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. However, I am going to reduce that award to a total of \$800.00, to acknowledge that the Landlords did not provide sufficient evidence to prove that they mitigated their losses to a full extent, pursuant to Section 7(2) of the Act.

The Landlords have established a monetary claim, in the amount of \$800.00. Pursuant to section 72(2) of the Act, I authorize the Landlords to keep the Tenants' security deposit in the amount of \$800.00, in full satisfaction of the monetary claim.

Conclusion

The Landlords have established a monetary claim, in the amount of \$800.00. Pursuant to section 72(2) of the Act, I authorize the Landlords to keep the Tenants' security deposit in the amount of \$800.00, in full satisfaction of the monetary claim.

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 22, 2019

Residential Tenancy Branch