



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT (2001)
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR-S, FF

Introduction

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

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 18, 2018. Both parties confirmed that the tenant served her submitted documentary evidence to the landlord in person on February 1, 2019. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 1, 2018 on a fixed term tenancy ending on April 30, 2019 as per the submitted copy of the signed tenancy agreement dated September 12, 2018. The monthly rent was \$1,150.00 payable on the 1st day of each month. A security deposit of \$575.00 was paid.

The landlord seeks a monetary claim of \$1,150.00 for the loss of rental income for October 2018. The landlord claims that the tenant provided 8 days of notice prior to the start of the tenancy "that she would not be moving in and wanted her deposit back." Both parties confirmed the tenant emailed the landlord on September 22, 2018 notification that she would not be taking possession and moving in. The landlord further stated that efforts were made to re-advertise the space for rent, but was not successful. The landlord seeks recovery of the loss of rent for the tenant's lack of notice.

The tenant argued that she did not receive a copy of the signed tenancy agreement and as well viewed an online advertisement for the rental unit at a lower rental amount.

In support of this claim the landlord has submitted:

A copy signed tenancy agreement dated September 12, 2018

A copy of online ads advertising the rental unit from

A copy of the tenant's request for return of the security deposit dated September 29, 2018 received by Canada Post Registered Mail on October 4, 2018

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, both parties confirmed that a signed tenancy agreement was entered into on September 12, 2018 to begin a tenancy on October 1, 2018. Both parties confirmed the tenant emailed the landlord notification that she would not be moving in and starting the tenancy. The landlord claims that the tenant failed to provide proper 1 month notice to end the tenancy which resulted in the landlord's loss of rental income for October 2018 of \$1,050.00.

Section 44 (1) (a) (i) states a tenancy only ends when the tenant gives notice to end the tenancy pursuant to section 45 of the Act. Section 45 (2) states in part that a tenant may end a fixed term 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, is not earlier than the date specified in the tenancy agreement and is the day before the day in the month that rent is payable under the tenancy agreement.

Residential Tenancy Branch Policy Guideline # 4, Duty to Minimize states in part that In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent. 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.

The landlord provided undisputed evidence that despite efforts to re-rent the unit, the landlord was unable to re-rent for October 2018 and suffered a loss of rental income.

I find based upon the undisputed evidence provided by both parties that the tenant failed to provide proper 1 month notice to the landlord and that the landlord made reasonable efforts to re-rent the unit by immediately advertising it for rent. I dismiss the tenant's claim that the tenancy was void due to the landlord not providing a copy of the tenancy agreement to the tenant. The landlord has established a claim for loss of rental income of \$1,050.00 for October 2018.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$575.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted a monetary order for \$575.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the order may be filed in the

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: February 08, 2019

Residential Tenancy Branch