



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for money owed, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for money owed?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on April 15, 2018 and was to expire on April 15, 2019. Rent in the amount of \$2,200.00 was payable on the first of each month. The tenant paid a security deposit of \$1,100.00. The tenancy ended mid-September 2018. Filed in evidence is a copy of the tenancy agreement.

The landlord claims as follows:

a.	Loss of rent for September 2018	\$1,100.00
b.	Filing fee	\$ 100.00
	Total claimed	\$2,200.00

The landlord's agent testified that landlord believes they are entitled to recover half month rent for September 2018, because the tenant ended the fixed term agreement and they were unable to find a new renter to take possession until September 28, 2018.

The landlord's agent testified that as soon as they were aware the tenant was vacating they advertised the premise for rent.

The tenant testified that they are not responsible for any loss of rent. The tenant stated that they were working with the landlord's agent to purchase their own home. The tenant stated that the landlord's agent was fully aware that they would be vacating because they were involved in the agreement to purchase a new residence in July 2018.

The landlord's agent stated that they were not aware of this.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Tenant's notice (fixed term)

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
(c) is the day before the day in the month, or in the other period on which the tenancy is based,*

...

I accept the evidence that the tenant breached the fixed term agreement by vacating the property prior to the fixed term agreement.

However, I am not satisfied that the landlord has complied with section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, the landlord's agent or the company for the landlord was involved in the tenant purchasing a property elsewhere. The agreement for purchase was signed in July 2018.

I find the landlord's agent or the company for the landlord had a duty to inform the landlord and to make every effort to re-rent the premise once that agreement was signed.

I also find the landlord's agent had a duty to ensure the tenant was fully aware of any financial obligation they may have under their tenancy agreement, especially when they are acting as the tenant's real estate agent to purchase a property.

While, I accept the landlord may not have known the tenancy was ending; however, I am satisfied that the landlord's agent knew and should have taken reasonable steps to inform both parties.

In light of the above, I dismiss the landlord's claim for loss of rent. As the landlord was not successful, I find the landlord is not entitled to recover the filing fee from the tenant.

Since the landlord has no authority to retain the tenant's security deposit, I Order the landlord to return to the tenant the full amount of their security deposit in the amount of **\$1,100.00.**

Should the landlord fail to comply with my order, I grant the tenant a monetary order in the above amount, pursuant to section 67 of the Act.

Conclusion

The landlord's application is dismissed. The tenant is granted a monetary order for the return of their security deposit.

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 05, 2019

Residential Tenancy Branch