



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S, FFT, MNSD

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security and pet deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security and pet deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for loss arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security and pet deposit in partial satisfaction of the monetary award requested?

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

Is the tenant entitled to a monetary award equivalent to the amount of his pet damage and security deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

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

Background, Evidence

The landlord's testimony is as follows. The tenancy began in 2016 however the parties had renewed fixed term agreements on several occasions. The most recent agreement was for a fixed term from May 1, 2018 to October 31, 2018. The tenants were obligated to pay \$3200.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$1500.00 security deposit and \$1500.00 pet deposit. Written condition inspection reports were conducted at move in and move out. The landlord testified that on August 13, 2018 the tenant advised him in writing that he would be moving out early on October 1, 2018.

The landlord testified that he advertised on Craigslist on August 17, 2018 for \$3495.00 per month. The landlord advised that he refreshed the advertisement often and showed several potential candidates but with no success. The landlord testified that he reposted the advertisement on September 8, 2018 at a price of \$3250.00 per month. The landlord reposted the advertisement again on October 8, 2018 for \$3195.00 per month and then once again on October 17, 2018 for \$2995.00 per month. The landlord testified that he was finally able to rent it with the help of a rental agent and by furnishing the apartment on November 15, 2018. The landlord requests the loss of revenue for October in the amount of \$3200.00, \$100.00 for the filing fee and \$25.00 for postage costs to serve documents for this hearing for a total claim of \$3325.00.

The tenant gave the following testimony. The tenant testified that he gave the landlord seven full weeks' notice to rent the unit out. The tenant testified that instead of trying to rent it at the same price or a modest increase the landlord sought an increased amount of almost ten percent. The tenant testified that the landlord priced himself out of a softening market and missed the opportunity to rent it quickly and failed to mitigate the loss.

Analysis

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 arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Firstly, I address the landlords claim

Based on the evidence presented, I find that the landlord did not attempt to the extent that was reasonable, to re-rent the premises after receiving written notice of the tenant's intention to vacate the rental unit. The landlord posted an online rental advertisement. I find that the landlord has not attempted to fully minimize its losses. The landlord did not reduce the rental price or maintain the current rate, but instead raised it by \$295.00 and did not offer a shorter fixed term lease or a month-to-month tenancy, as incentives to try to attract potential tenants. The landlord only lowered the price to the same rate as to what the subject tenant was paying on October 8, 2018; almost two months after he received notice from the tenant that he was moving out. As such, I find that the landlord has failed to fully mitigate its losses under section 7(2) of the *Act* and is not entitled to any loss of revenue; accordingly I dismiss this portion of the landlords' application.

The landlord was seeking the recovery of the postage fees for serving documents for this hearing. Section 72 of the *Act* does not include postage fees as hearing related costs, accordingly; I dismiss this portion of the landlords claim.

The landlord has not been successful in this application. The tenant is entitled to the return of his security and pet deposit. The tenant is also entitled to the recovery of the \$100.00 filing fee for this hearing for a total award of \$3100.00.

Conclusion

The tenant has established a claim for \$3100.00. I grant the tenant an order under section 67 for the balance due of \$3100.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlords' application is dismissed in its entirety without leave to reapply.

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 25, 2019

Residential Tenancy Branch