



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HENRY PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FFL MNDCL-S

Introduction

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

- and a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord's agent, HR, and his interpreter JX, attended the hearing by way of conference call, the tenant did not. I waited until 1:41 p.m. to enable the tenant to participate in this scheduled hearing for 1:30 p.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution hearing package on December 12, 2018, by way of registered mail to the forwarding address provided by the tenant. The landlord's agent provided a tracking number in their evidence. In accordance with sections 89 and 90 of the *Act*, I

find that the tenant was deemed served with the landlord's application on December 17, 2018, five days after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and losses?

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

Background and Evidence

This fixed term tenancy began on October 8, 2018, with monthly rent set at \$1,325.00. The landlord collected a security deposit in the amount of \$662.50, which they still hold. This was a fixed term tenancy which was to end on September 30, 2019. The tenant gave notice on November 10, 2018 by way of text message to the landlord that he would be moving out on November 27, 2018, prior to the end of this tenancy. The landlord included this text message in their evidentiary materials.

The tenant moved out on November 27, 2018, and landlord mitigated their losses by advertising the unit for rent immediately on November 10, 2018, and was able to find a new tenant to fill the vacancy. The suite was re-rented for January 1, 2019, for the same monthly rent of \$1,325.00.

The landlord is seeking compensation for the lost rental income for the month of December 2018 as the landlord was not able to fill the vacancy until January 2019. The landlord is also applying to recover the filing fee for this application.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) *the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

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, that rent is payable under the tenancy agreement.

The landlord's agent provided undisputed, sworn testimony that the tenant had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenant in regards to this tenancy. The tenant moved out ten months earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenant did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that they were able to re-rent the suite, and the landlord is seeking a monetary order for the one month of lost rental income.

I am satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for December 2018, as is required by section 7(2) of the *Act*. Accordingly, I find that the landlord is entitled to a monetary order in the amount of \$1,325.00 in satisfaction of the lost rental income due to the tenant's failure to comply with sections 44 and 45 of the *Act*.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit plus applicable interest in satisfaction of the

monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

Conclusion

I find that the landlord is entitled to the monetary order applied for due to the tenant's failure to comply with the *Act*.

I issue a Monetary Order in the amount of \$762.50 in the landlord's favour under the following terms which allows the landlord to retain the security deposit in satisfaction of the landlord's monetary award:

Item	Amount
Monetary Claim for Lost Rental Income due to tenant's failure to comply with sections 44 and 45 of the <i>Act</i>	\$1,325.00
Filing Fee	100.00
Security Deposit	-662.50
Total Monetary Order	\$762.50

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: March 11, 2019

Residential Tenancy Branch