



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Living
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on March 26, 2019. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- permission to retain the security deposit to offset the rent owed; and,
- to recover the filing fee from the Tenant for the cost of this application.

The Landlord's agents (the Landlord) and the Tenant both attended the hearing and provided testimony. Both parties confirmed receipt of each other's documentary evidence and neither party took issue with the service of these documents.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

Background and Evidence

The Landlord stated that she is seeking compensation because the Tenant failed to give proper notice when she moved out. The Tenant stated that she sent an email on October 15, 2018, stating that she would be vacating the unit as of November 1, 2018. Both parties agree that the Tenant moved out on October 31, 2018.

Both parties agree that the Landlord holds a security deposit in the amount of \$750.00. Both parties also agree that monthly rent was \$1,615.00 at the time the tenancy ended and that rent was due on the first of the month.

The Landlord stated that the same week she got notice from the Tenant at head office, an ad was posted to try and re-rent the unit. The Landlord stated that they received 16 emails, 8 phone calls, and 4 showings for the rental unit over the course of November and December 2018. The Landlord stated that there was an online ad on both Kijiji, as well as their own company website, listing all of the units available in their buildings, including this unit. The Landlord stated that she was not able to re-rent the unit until January 22, 2019, at the same rental rate. The Landlord expressed that this is a slower time of the year (winter), and it is harder to find people willing to move in during that time. The Landlord is seeking to recover November and December 2018 rent (2 x \$1,615.00), because the unit sat empty while they were trying to re-rent it. The Landlord is also seeking to recover a \$20.00 NSF fee. The Landlord stated that the Tenant breached section 45 of the Act because she was under a fixed term tenancy agreement until June of 2019. A copy of this agreement was provided into evidence.

The Tenant expressed that she was not happy with the parking in the building among other things, which should allow her to end the tenancy early.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

The Landlord is seeking to recover lost rent for November and December 2018, the period of time that the unit was vacant. The Landlord is not seeking to recover part of January 2019, even though the unit was empty for most of this period as well. I turn to section 45 of the Act:

Tenant's notice

- 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.

I find the Tenant breached section 45 of the Act by giving Notice to end the tenancy prior to the end of the fixed term. The tenancy agreement clearly shows that the Tenant was under a fixed term tenancy agreement until June 30, 2019. As such, when they gave Notice on October 15, 2018, that they would be vacating the rental unit by the beginning of November 2018, I find this was in breach of section 45 of the Act. There is insufficient evidence that the Tenant was legally entitled to end the tenancy in this manner, and I find the Landlord is entitled to compensation, as this breach caused them to suffer a loss in rent, especially with such short notice.

Eventually the Landlord was able to re-rent the unit at the same rental rate, but it sat empty from November 1, 2018 until January 22, 2019. Although the rental unit sat empty for a period of time, I note the Landlord was taking steps to re-rent the unit. In doing so, they listed the unit on multiple sites, right after they were made aware of the unit being empty. The Landlord stated they fielded 16 emails, 8 phone calls, and also showed the unit 4 times. Further, I find it more likely than not that the weather may have had an impact on turnover, as it was during a cold and wintery part of the year.

I note the following relevant portions of the **Policy Guideline #5 – Duty to Minimize Loss**:

Efforts to minimize the loss must be "reasonable" in the circumstances.

[...]

Claims for loss of rental income

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.

Considering the totality of the situation, I find the Tenant breached section 45 of the Act, and the Landlord is entitled to compensation. I also find the Landlord made reasonable efforts to re-rent the unit and mitigate their loss. I find they are entitled to recover lost rent for the months they have requested (November and December 2018), which amounts to \$3,230.00. I decline to award the cost of the NSF fee, as it is not sufficiently clear what month this is from, or why the Tenants should be responsible for this amount.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the Tenant to repay the \$100. Also, pursuant to sections 72 of the Act, I authorize that the security

deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Rent for November and December 2018	\$3,230.00
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$750.00)
TOTAL:	\$2,580.00

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$2,580.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 27, 2019

Residential Tenancy Branch