



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL-S MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the "Act") for monetary order for unpaid rent, a monetary order for compensation for damages to the rental unit and reimbursement of the filing fee.

All parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord testified that they served the tenants with the notice of dispute resolution package and the landlord's evidence by registered mail on November 30, 2018. The landlord provided the Canada Post registered mail tracking number. The tenants acknowledged receipt of these documents did not raise any issues of service. I find the tenants were served in accordance with the Act.

Preliminary Matter: Settlement Regarding Damages to Rental Unit

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order. Given the agreement reached between the parties during the proceedings, I find that the parties have settled a portion of their dispute and the following records this settlement as a Decision:

The Parties mutually agreed as follows:

- 1) The tenants agree to pay the landlord a monetary award of \$1,500.00 in full satisfaction of the landlord's application for compensation related to damages to the rental unit

These terms comprise the full and final settlement of the dispute relating to the damages to the rental unit. All other aspects of the landlord's application remain pending and will be analyzed below. Both parties testified they understood and agreed the above terms are final, binding, and enforceable, and this part of their dispute.

Based on the above, I find that all matters in relation to damages to the rental unit between these parties in this application are resolved pursuant to the above agreed terms.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, I do not reproduce all details of the respective submissions and/or arguments in my decision. I reference only the facts that are relevant to my decision herein.

The landlord testified that this tenancy commenced as a fixed term tenancy starting on August 1, 2015 and ending July 31, 2016. The tenancy continued on a month-to-month basis after July 31, 2016. The rent was \$3,000.00 monthly and the tenants paid a \$1,500.00 security deposit which the landlord continues to hold. The landlord provided a copy of the tenancy agreement.

The parties both testified that this tenancy was the subject of an arbitration hearing in June 2018. On June 29, 2018, an arbitrator granted the landlord an order for possession, effective upon two days of service on the tenants following the issuance of a 1 Month Notice to End Tenancy for Cause due to unauthorized subletting of the lower level of the rental unit.

The landlord testified that, despite the order for possession dated June 29, 2018, the tenants did not vacate the rental unit until August 18, 2018. The landlord provided

copies of multiple emails between the parties in August 2018. The landlord sent an email dated August 17, 2018 stating that the property was vacated on August 17, 2018 but some outdoor furniture remained on the property. The emails state that the condition inspection on move out was conducted on August 18, 2018.

The landlord testified that the tenants did not pay any rent for July 2018 or August 2018. The landlord provided his rental ledger showing a rent payment of \$3,000.00 dated July 1, 2018 was returned because the cheque had insufficient funds. The ledger does not show any rent payments for July 2018 or August 2018.

The tenants testified that they sublet the lower level of the rental until and that the sublet tenants had vacated the rental unit by the end of July 2018.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and I find that the tenants were obligated to pay the monthly rent in the amount of \$3,000.00 pursuant to the tenancy agreement.

I find that this tenancy ended when the order for possession was granted on June 29, 2018. However, I am satisfied from the parties' testimony that the tenants overheld the tenancy.

Section 57 of the *Act* defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy ended.

Residential Tenancy Policy Guideline #3 states a tenant is not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises.

The tenants testified that the rental unit was vacated by the end of July 2018 whereas the landlord testified that the tenants moved out on August 18, 2018. Based on the emails provided landlord, I find that that the tenants vacated the property on August 17, 2018.

As the Tenant remained in the unit for the full rental period of July 2018, the landlord is entitled to receive a monetary award of \$3,000.00 for overholding in the unit during this period. In addition, since the tenants remained in the rental unit until August 17, 2018, I find that the landlord is entitled to overholding rent in the amount of \$1,645.09 (seventeen days times the per diem rate of \$96.77).

Based on the agreed testimony of the parties and following a review of the tenancy agreement, I find that the landlord holds a security deposit of \$1,500.00 which may be deducted from the overholding damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlord \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

Accordingly, I grant the landlord a monetary order for **\$4,841.86**, calculated as follows:

<u>Item</u>	<u>Amount</u>
Agreed compensation for damages to rental unit	\$1,500.00
Overholding July 2018	\$3,000.00
Overholding August 2018	\$1,741.86
Filing fee	\$100.00
Less: security deposit	(\$-1,500.00)
Total	\$4,841.86

Conclusion

I grant the landlord a monetary order in the amount of **\$4,841.86**. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court to 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 8, 2019

Residential Tenancy Branch