



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on November 29, 2018 (the “Application”). The Landlord sought to recover unpaid rent, to keep the security deposit and reimbursement for the filing fee.

The Landlord and Co-landlord appeared at the hearing. The Tenant did not appear. I explained the hearing process to the Landlord and Co-landlord who did not have questions when asked. The Landlord and Co-landlord provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord testified that the hearing package and evidence were served on the Tenant by the Co-landlord in person on November 30, 2018. The Co-landlord confirmed this. The Landlord testified that the Tenant was still at the rental unit at the time. The Landlord had submitted a statement signed by a witness confirming service as described.

Based on the undisputed testimony of the Landlord and Co-landlord, as well as the signed witness statement, I find the Tenant was served with the hearing package and evidence in accordance with sections 59(3), 88(a) and 89(1)(a) of the *Residential Tenancy Act* (the “Act”).

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord and Co-landlord were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following in unpaid rent:

- \$400.00 for October rent
- \$800.00 for November rent
- \$800.00 for December rent

The Landlord testified as follows.

There was a written tenancy agreement between the Landlord and Tenant in relation to the rental unit. The tenancy started February 15, 2018 and was a month-to-month tenancy. Rent was \$800.00 per month due on the first day of each month. The Tenant paid a security deposit of \$400.00. The agreement is signed by the Landlord and Tenant.

The Landlord still has the security deposit and is seeking to keep it for unpaid rent.

The Tenant vacated the rental unit November 30, 2018. The Tenant did not provide a forwarding address.

The Tenant only paid \$400.00 in rent for October. The Tenant did not pay rent for November or December.

In relation to December rent, the Landlord is seeking loss of rent for this month. The Landlord did not know if or when the Tenant was going to vacate the rental unit. The Landlord found out the Tenant was vacating on November 30, 2018. The Tenant did not clean the rental unit and so the Landlord had to. The rental unit was not ready to re-rent immediately because it was not clean. The Landlord did not re-list the rental unit in mid-December when the rental unit was ready because it is hard to find tenants in December.

The Landlord submitted a Condition Inspection Report she did showing the rental unit was dirty upon move-out.

The Landlord was issued an Order of Possession and Monetary Order in a previous proceeding, the file number of which is noted on the front page of this decision.

Analysis

Section 7(1) of the *Act* states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Section 26 of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I have reviewed the prior proceeding. The Landlord was issued an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent dated October 20, 2018 for \$400.00 in unpaid rent. The Landlord was already issued a Monetary Order for \$400.00 for October rent. The Landlord cannot claim for this again.

I accept the undisputed testimony of the Landlord that the Tenant remained in the rental unit for November and did not pay rent for November. I find the Landlord is entitled to compensation in the amount of \$800.00 for unpaid rent for November.

I am not satisfied the Landlord is entitled to loss of rent for December. The Landlord states that she did not know when the Tenant was going to vacate. However, the Landlord had been issued an Order of Possession on November 20, 2018 and could have enforced that Order if the Tenant was not complying with it. I accept that the Landlord had to do an inspection and that the Tenant left the rental unit dirty; however, I am not satisfied it was reasonable that this took two weeks to address. Further, the Landlord did not list the rental unit for rent in December and thus failed to mitigate her loss. In these circumstances, I am not satisfied the Landlord is entitled to loss of rent for December.

Given the Landlord was partially successful in this application, I award her reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is awarded \$900.00. The Landlord is entitled to keep the \$400.00 security deposit towards this amount pursuant to section 72(2)(b) of the *Act*. The Landlord is issued a Monetary Order for \$500.00.

Conclusion

The Landlord is awarded \$900.00. The Landlord is entitled to keep the \$400.00 security deposit towards this amount. The Landlord is issued a Monetary Order for \$500.00. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 *Act*.

Dated: March 26, 2019

Residential Tenancy Branch