



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

- a Monetary Order pursuant to section 67 of the *Act* and an order to withhold the security or pet deposit; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both landlords, while only tenant L.H. attended the hearing. All parties present were given a full opportunity to be heard, to present sworn testimony and to make submissions.

The tenant confirmed receipt of the landlords' application for dispute resolution and evidentiary package after it was sent via Canada Post Registered Mail. The tenant confirmed no evidence was submitted on behalf of the tenants. I find the tenants were duly served with the landlords' application for dispute and evidentiary package in accordance with the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award? Can the landlords recover the filing fee? Can the landlords retain the tenants' security deposit in partial satisfaction for money owed?

Background and Evidence

The parties explained this tenancy began on March 15, 2018 and ended in mid-July 2018. Rent was \$1,350.00 per month. A security deposit of \$675.00 paid at the outset of the tenancy continues to be held by the landlords. The landlords stated they had put this

amount towards unpaid rent for July 2018, while the tenant claimed rent for July 2018 had been paid its entirety.

The landlords have applied for a monetary award of \$2,700.00 representing unpaid rent for August and September 2018. The landlords testified that the parties had signed a fixed-term tenancy which was set to expire on February 28, 2019. The tenant acknowledged that he and tenant J.M. vacated the property in mid-July 2018, breaking the fixed-term tenancy, but the tenant argued the landlords had made little effort to re-rent the suite.

The landlords stated they scheduled approximately six viewings of the property during their attempts to find new tenants. They said they advertised the rental unit on three different websites and explained they did not increase the amount of rent sought for the unit. The landlords explained the rental unit assisted them to pay for their mortgage; therefore, it was in their best interest to have the unit occupied as quickly as possible.

As mentioned previously, the tenant questioned the efforts the landlords had made to re-rent the suite. The tenant said no efforts were made to refresh the listing online and he alleged the listing was never updated. Furthermore, the tenant questioned whether six showings over eight weeks warranted a significant effort to find new tenants.

Analysis

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

After considering the testimony of both parties, and reviewing the evidentiary packages, I find that the landlords made *reasonable* efforts to re-rent the suite. I accept the landlords’ testimony that all efforts were made to re-rent the suite as quickly as possible

so that any harm to their mortgage payments were mitigated. Furthermore, I find the landlords actions in posting the advertisement on three separate websites, combined with six different viewings to be indicative of the landlords' intentions to quickly find new tenants. While I have considered the testimony of the tenant related to "refreshing" of the listings, I note the test associated with damages under the *Policy Guideline* is not one of "significant efforts" merely "reasonable" ones. For these reasons, I dismiss this portion of the tenant's argument.

I find that some questions remain related to the amount of rent owing. The tenant testified that rent in July 2018 was paid in its entirety, while the landlords said they used the security deposit against unpaid rent for July 2018. The landlords said they had text messages indicating this. These messages were not provided in their evidentiary package. I find the landlords have failed to provide sufficient evidence in support of their testimony that this deposit was to be used for unpaid July 2018 rent. Furthermore, I note section 38 of the *Act* requires a landlord to apply for dispute resolution, or to receive a tenant's written permission, when a landlord is seeking to withhold a security deposit. I therefore find that the security deposit continues to be held in trust. Using the offsetting provisions contained in section 72 of the *Act*, I order the landlord to use this security deposit against unpaid August 2018 rent.

As the landlords were successful in their application, they may recover the \$100.00 filing fee.

I find the landlords are entitled to a monetary award as follows:

ITEM	AMOUNT
Unpaid Rent August 2018	\$1,350.00
Unpaid Rent September 2018	1,350.00
Less Security Deposit	(-675.00)
Return of Filing Fee	100.00
TOTAL =	\$2,125.00

Conclusion

The landlords are granted a monetary award of \$2,125.00. The landlords are provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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 26, 2019

Residential Tenancy Branch