



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEN BOYKO PROPERTIES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, FFL

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on December 17, 2018. The Landlord applied for a monetary order for unpaid rent and utilities, and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord's Agent (the "Landlord") attended the hearing and was affirmed to be truthful in her testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlords testified the Application for Dispute Resolution, and Notice of Hearing had been sent to the Tenant by registered mail on December 18, 2018, two Canada post tracking numbers were provided as evidence of service. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days later. I find that the Tenants had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

Preliminary Issue

The Landlord requested to withdraw her claim for \$25.67 in unpaid utilities for this tenancy.

As the Tenants were not in attendance to object to the Landlord's request, I find it appropriate to grant the Landlord's request.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The Landlords testified that the tenancy began on October 16, 2018, as a month to month tenancy. Rent in the amount of \$700.00 was to be paid by the first day of each month and the Landlords had been given a \$350.00 security deposit.

The Landlord testified that a neighbour of the Tenants notified her, that they had started moving out of the rental unit around November 15, 2018. The Landlord testified that she contacted the Tenants, via text message to ask them what was happening. The Landlord testified that the Tenants responded to her on November 26, 2018, stating that they were ending their tenancy as of November 30, 2018. The Landlord testified that the Tenants had moved out of the rental unit on November 30, 2018, and that the move-out inspection had been conducted on that same day.

The Landlords testified that they began looking for a new renter to take over the rental unit right away, but there were unable to secure a new renter until February 1, 2019. The Landlord is seeking to recover the loss in rental income, due to the Tenants short notice, for December 2018, less the security deposit they are holding.

Analysis

Based on the evidence before me, the testimony of the Landlords, and on a balance of probabilities that:

Section 45(1)(a) of the *Act* states that a tenant cannot end a tenancy agreement without giving the landlord at least one month's notice.

Tenant's notice

45 (1) *A tenant may end a periodic 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, and

(b) 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

In this case, I accept the undisputed testimony of the Landlord that she received a text message from the Tenants on November 26, 2018, advising her that they had moved out and were ending their tenancy as of November 30, 2018.

Pursuant to section 45 of the *Act*, I find that this tenancy could not have ended in accordance with the *Act* until December 31, 2018. I find that the Tenants failed to comply with the *Act* when they gave short notice, by text message, to the Landlord to end the tenancy as of November 30, 2018.

I also accept the testimony of the Landlord that the Tenant returned possession of the rental unit to the Landlord and that the move-out inspection was conducted on November 30, 2018.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that

compensation is due. 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.

In this case, I find that the Tenants' breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord. I also find that the Landlord has provided sufficient evidence to prove the value of that loss and that they took reasonable steps to minimize their losses due to the Tenants' breach.

Therefore, I find that the Landlord has established an entitlement to a recovery of their loss of rental income for December 2018, in the amount of \$700.00. I also grant the Landlord permission to retain the \$350.00 security deposit for this tenancy, in partial satisfaction of this award.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in her application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for her application.

I grant the Landlords a monetary order of \$450.00, consisting of \$700.00 in unpaid rent, \$100.00 for the recovery of the filing fee for this hearing, less the \$350.00 security deposit the Landlord is holding for this tenancy.

Conclusion

I find for the Landlords under sections 38, 67 and 72 of the Act. I grant the Landlords a **Monetary Order** in the amount of **\$450.00**. The Landlords are provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant 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: April 5, 2019

Residential Tenancy Branch