



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and,
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the *Act*.

The tenant testified that she previously filed an application for dispute resolution for return of the security deposit and the application was dismissed with leave to reapply because the tenant had not provided the landlord with her forwarding address prior to making her application for dispute resolution. The file number for the previous matter is stated on the first page of this decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the tenant entitled to a refund of all or a portion of the tenant's security deposit pursuant to section 38?

Is the landlord entitled to recover her filing fee for this application from the tenant pursuant to section 72?

Background and Evidence

The parties agreed that they had entered a fixed term tenancy commencing on February 1, 2018 and ending on January 31, 2019. The monthly rent was \$1,280.00 and the tenant paid a \$640.00 security deposit. The rental unit was located in the basement of a house with another tenant residing in a separate rental unit upstairs.

The tenant complained that the upstairs tenants made excessive noise. She stated that this noise was very disruptive because she had very young children who needed rest. The tenant complained to the landlord and the upstairs tenant about the noise.

The landlord said that she spoke with the upstairs tenants. However, the landlord testified that the house was old and it had wooden floors so some noise was inevitable. In addition, the landlord testified that the upstairs tenants have young children so some noise is to be expected.

The tenant testified that she notified the landlord in mid-April that she intended to move out of the rental unit at the end of June 2018. The tenant moved out of the rental unit on June 26, 2018.

A new tenant moved in on July 1, 2018. The landlord testified that this tenant was only a temporary tenancy. The landlord testified that this tenant was remodelling another property so they only needed temporary accommodations during the renovations.

The landlord testified that she immediately attempted to find a new tenant by advertising the rental unit on a single website. The landlord testified that she advertised the property at a monthly rent of \$1,300.00. The landlord did not provide copies of these advertisements as evidence.

The subsequent tenant moved out of the rental on August 31, 2018 and the landlord was not able to find another tenant until September 6, 2018. The landlord requested compensation of \$256.00 for loss of rent from September 1, 2018 to September 6, 2018.

The tenant that moved in on September 6, 2018 gave notice at the end of November 2018 that they were ending their tenancy on December 31, 2018. The landlord again attempted to secure a new tenant by listing the rental unit on a single website. The landlord provided copies of documents which she stated were rental advertisements. However, these documents were written entirely in Chinese without English translation.

The landlord testified that she listed the rental unit for rental rates ranging from \$1,300.00 to \$1,350.00 per month. The landlord testified that she was unable to find a suitable tenant for January 2019. The landlord requested compensation of \$1,280.00 for loss of rent from January 2019.

The parties agreed that the tenant provided her forwarding address in writing on December 12, 2018.

Analysis

The landlord seeks compensation for the loss of rent resulting from the tenant's early termination of the tenancy agreement. Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

I find that the tenant notified the landlord in mid-April 2018 that she was ending the tenancy at the end of June 2018 even though the parties had a fixed term tenancy with a stated end date of January 31, 2019. Section 45(2) of the *Act* states that a tenant cannot end a fixed tenancy before the stated end date of the tenancy agreement. Accordingly, I find that the tenant breached the tenancy agreement by ending the tenancy early. Furthermore, I am satisfied that landlord has suffered a loss of rent from the tenant's breach of the tenancy agreement by having the rental unit vacant from September 1, 2018 to January 6, 2019 and the entire month of January 2019.

However, I am not satisfied that the landlord has provided sufficient evidence to establish that she has taken reasonable measures to mitigate her loss of rent in September 2018. The tenant gave the landlords notice Mid-April 2018 that she was ending the tenancy on June 26, 2018. I find that the landlord did act diligently to obtain a new tenant by July 1, 2018. However, I find that the landlord has failed to provide sufficient evidence that she acted diligently to mitigate her loss by failing to secure a tenant from September 1, 2018 until September 6, 2018.

The landlord testified that she was aware that the tenant who had moved into the rental unit in July 2018 was only staying temporarily. The landlord testified that she advertised the vacancy on a rental website. However, the landlord did not provide copies of the advertisement. The landlord also testified that she marketed the property at a monthly rent of \$1,300.00 which exceeds the rent of \$1,280.00 which the tenant was obligated to pay. I find that the landlord has not provided sufficient evidence of mitigation of the September 2018 rent loss claim.

Furthermore, I am not satisfied that the landlord has provided sufficient evidence to establish that they have taken reasonable measures to mitigate their loss of rent in January 2019. The landlord testified that she only marketed the vacancy on a single website. The landlord provided a copy of purported advertisements from December 2018 as evidence. However, these documents were not probative because the documents were completely in Chinese without English translations.

In addition, the landlord testified that she marketed the property at a rent ranging from \$1,300.00 to \$1,350.00 per month which again exceeded the rent paid by the tenant. Furthermore, the vacancy in January 2019 was nine months after the tenant gave her notice that she was moving out in April 2018. I find that the landlord did not take sufficient measures to mitigate her loss by failing to secure a replacement tenant nine months after the tenant gave her notice.

Accordingly, I am not convinced that the landlord took reasonable measures to mitigate her loss and I dismiss the landlord's request for compensation for loss of rent based upon the tenant's early termination of the tenancy agreement. Furthermore, since I have dismissed the landlord's application for compensation, I also dismiss the landlord's application to retain the tenant's security deposit.

Since I have determined that the landlord is not entitled to retain the security, the landlord is obligated to return the tenant's security deposit pursuant to *Residential Tenancy Policy Guideline No. 17* which states that:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act¹⁴. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

Accordingly, I order that the landlord return the security deposit of \$640.00 to the tenant.

Since the landlord has not prevailed in this matter, I dismiss the landlord's application for reimbursement of the filing fee.

Conclusion

I dismiss the landlord's application for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement.

I dismiss the landlord's application to retain all or a portion of the tenant's security deposit.

I dismiss the landlord's application for reimbursement of the filing fee.

I order that the landlord return the security deposit to the tenant and I grant the tenant a monetary order in the amount of **\$640.00**. If the landlord fails to comply with this order, the tenant 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: April 17, 2019

Residential Tenancy Branch