



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

- a monetary order for unpaid rent and other money owed 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 the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:51 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord and their agent/translator attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord, their agent/translator and I were the only ones who had called into this teleconference.

The landlord's agent/translator (the agent) testified that they sent a copy of the landlord's dispute resolution hearing package and written evidence to the tenant at an address the tenant had provided to them on two separate occasions by registered mail on March 28, 2019. The agent provided written evidence and sworn testimony to confirm this registered mailing, including the Canada Post Tracking Number. Based on this undisputed evidence and testimony, I find that the tenant was deemed served with this material in accordance with sections 88, 89 and 90 of the *Act* on April 2, 2019, the fifth day after the registered mailing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and other money owed arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The agent provided undisputed sworn testimony and written evidence that the tenant and the landlord signed a fixed term Residential Tenancy Agreement (the Agreement) on March 7, 2019. According to the terms of the Agreement, the fixed term was to run from March 9, 2019 until March 31, 2020. Although monthly rent was set at \$8,500.00, payable in advance on the first of each month, plus utilities for this furnished rental unit, the agent said that the landlord had agreed to charge the tenant one-half month's rent for March 2019. The landlord continues to hold the tenant's \$4,250.00 security deposit on March 7, 2019.

A few days after the tenant signed the Agreement, the tenant changed their mind and attempted to cancel the Agreement. However, by that time, the landlord had already cashed the tenant's security deposit, the key had been provided to the tenant, and the parties had engaged in a joint move-in condition inspection on March 12, 2019. The landlord entered into written evidence a copy of the report issued after the parties completed the joint move-in condition inspection. The agent testified that the tenant has paid no rent to the landlord.

The tenant returned the key to the landlord on March 15, 2019, claiming that they were cancelling the Agreement.

The landlord's application for a monetary award of \$25,500.00 included the following items listed on the landlord's Monetary Order Worksheet entered into written evidence by the landlord:

Item	Amount
Security Deposit	\$4,250.00
Unpaid Rent March 15 - 31, 2019	4,250.00
Unpaid Rent April 2019	8,500.00
Loss of Rent May 2019	8,500.00
Total of Above Items	\$25,500.00

The landlord also applied to recover the \$100.00 filing fee for this application.

At the hearing, the agent gave sworn testimony that as soon as the landlord and the agent received the tenant's returned key to the rental unit, they commenced efforts to re-rent the premises to another tenant on March 15, 2019. The agent provided written evidence in the form of advertisements placed on a popular rental website as well as a rental website in another language targetting potential tenants from that language community. The agent noted that the advertised monthly rent was the same as the amount the tenant had agreed to pay in the Agreement. The agent testified that they were able to find new tenants for this rental unit during the nine days before this hearing through the popular rental website. However, the agent said that the landlord had had to accept a reduced monthly rent of \$7,600.00, for a tenancy that is to commence on June 1, 2019, as a means of having a paying tenant in this property.

Analysis

I first note that the following wording of section 16 of the *Act* clearly establish that this tenancy began on March 7, 2019, the date that the parties signed the Agreement.

16 *The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.*

For this reason, once the Agreement was signed, the tenant had no legal right to unilaterally cancel that Agreement. I should also note that the tenant also paid a security deposit for this tenancy, received the key to the rental unit from the landlord/agent, and even participated in and signed a joint move-in condition inspection report, all steps which reinforce that the tenant had every intention of entering into a tenancy for this rental unit.

When the tenant returned the key to the landlord, advising the landlord that they no longer wished to go ahead with this tenancy, the landlord took possession of the rental unit and had no further obligation to the tenant with respect to this tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual

monetary amount of the loss or damage. Section 26(1) of the *Act* establishes that “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.”

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the tenant was in breach of their fixed term tenancy Agreement because they vacated the rental premises prior to the March 31, 2020 date specified in that Agreement. As such, the landlord is entitled to compensation for losses they incurred as a result of the tenant's failure to comply with the terms of their Agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent to the landlord for this tenancy, although they did pay a security deposit. Section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

In this case, I find that there is undisputed sworn testimony supported by written evidence that the landlord (and their agent) took reasonable steps to attempt to mitigate the tenant's exposure to the landlord's losses. The landlord immediately commenced reasonable efforts to find a new tenant, agreeing shortly before this hearing to accept a new tenant at a reduced monthly rental rate. I also find that the landlord did everything they could to find a tenant who would enter into a tenancy agreement for this rental space. I accept that the landlord was unable to obtain a tenant earlier than the June 1, 2019 date established with the new tenants for this property.

On this basis, I find that there is undisputed evidence that the landlord has discharged their responsibilities pursuant to section 7(2) of the *Act*. As such, I allow the landlord's application for the recovery of lost rent and monies owing from March 15, 2019 until May 31, 2019, the period claimed by the landlord. This results in a monetary award for loss of rent and monies owing totalling \$21,250.00 for this period.

As the landlord has been successful in this application, I allow them to recover the \$100.00 filing fee from the tenant.

I allow the landlord to retain the tenant's security deposit in partial satisfaction of this monetary award.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and other monies owing, and the filing fee for this application, and to retain the tenant's security deposit:

Item	Amount
Unpaid Rent March 15 - 31, 2019	\$4,250.00
Unpaid Rent April 2019	8,500.00
Loss of Rent May 2019	8,500.00
Less Security Deposit	-4,250.00
Filing Fee	100.00
Total Monetary Order	\$17,100.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 29, 2019

Residential Tenancy Branch