



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:

- and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

LA ('landlord') appeared and testified on behalf of the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the Act, I find that the tenants were duly served with the landlord's application and evidence. The tenants did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for losses and money owed?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This fixed-term tenancy began on April 1, 2018, and was to end on March 31, 2019. Monthly rent was set at \$2,400.00, payable on the first of the month. A security deposit and pet damage deposit was paid by the tenants in the amount of \$1,200.00 each deposit, which the landlord still holds.

It was undisputed by both parties that the tenants had moved out on December 31, 2018, before the end of this fixed-term tenancy. The tenants' sworn testimony is that they had to end the tenancy due to the fact that they had obtained employment in a different city.

The landlord testified that they were able to find a new tenant for February 1, 2019, at the same monthly rent. The landlord is seeking 1 month of lost rental income due to the tenants' noncompliance with the *Act* and tenancy agreement.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) *the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

The landlord provided undisputed evidence at this hearing that the tenants had moved out before the end of this fixed-term tenancy. I find that the tenants had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to this tenancy. The tenants moved 3 months earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that they were able to re-rent the suite, and are only requesting compensation in the amount of one month's rent for their losses. I am satisfied that the landlord had made an effort to mitigate the tenants' exposure to the landlord's monetary loss for the remainder of the tenancy, as is required by section 7(2) of the *Act*. I, therefore, allow the landlord a monetary order in the amount of \$2,400.00 for the tenants' failure to comply with the *Act* and tenancy agreement. In accordance with the offsetting provisions of section 72 of the *Act* I order the landlord to retain the tenants' security deposit and pet damage deposit in satisfaction of this claim.

As the landlord was successful in their application, I am allowing the landlord to recover the filing fee from the tenants

Conclusion

I order the landlord to retain the tenants' security and pet damage deposit in satisfaction of the monetary award for the tenants' failure to comply with sections 44 and 45 of the *Act*.

I issue a Monetary Order in the amount of \$100.00 in the landlord's favour, which allows the landlord to recover the filing fee for this application.

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of 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: May 15, 2019

Residential Tenancy Branch