



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 an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
 - Authorization to recover the filing fee for this application pursuant to section 72.
- This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

The landlord attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The tenant did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional twenty minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlords and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenants had been provided.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on January 15, 2019 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on January 20, 2019.

The landlord provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the landlord served the

tenant with the Notice of Hearing and Application for Dispute Resolution on January 20, 2019.

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72. This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

Background and Evidence

The landlord provided uncontradicted affirmed testimony that the parties entered into a 6-month fixed term tenancy agreement beginning November 1, 2018. The tenancy was scheduled to end on April 30, 2019. However, the tenant moved out without notice on December 31, 2018.

The rent was \$1,325.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$662.50 which the landlord holds. The tenant provided his forward address in writing to the landlord on December 31, 2018. The tenant has not provided authorization to the landlord to retain the security deposit. The tenant paid rent up to and including the month of December 2018 but did not pay rent after that time.

The landlord submitted a copy of the tenancy agreement.

The landlord testified that as soon as he learned the tenant had vacated without notice, he advertised immediately on websites to find a new tenant; the landlord was successful in renting the unit to someone else effective February 1, 2019. The landlord claimed a monetary award in the amount of \$1,325.00 for rent for the month of January 2019, authorization to apply the security deposit of \$662.50 to the monetary award and reimbursement of the filing fee of \$100.00.

The landlord brought this Application on January 14, 2019, within the 15-day period.

The landlord's claim is summarized as follows:

ITEM	AMOUNT
Rent – month of January 2019	\$1,325.00
Reimbursement of the filing fee	\$100.00
(less security deposit)	(\$662.50)
Monetary Order Requested	\$762.50

Analysis

Section 45 (2) considers how a tenant ends a fixed term tenancy, stating:

Tenant's notice

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.** (emphasis added)

Therefore, the tenant was required to provide notice in this case on or before November 30, 2018 stating the tenant was leaving on December 31, 2018. The tenant did not provide the notice required under section 45(2) and under the Agreement.

Section 7 of the *Act* provides that where a landlord claims against a tenant for loss of rent the landlord has a burden to prove the landlord took made every reasonable effort to minimize losses:

Liability for not complying with this *Act* or a tenancy agreement

7 (2) A landlord or tenant 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.** (emphasis added)

Residential Tenancy Policy Guideline 3: Claims for Rent and Damages for Loss of Rent provides information and policy statements with respect to claiming for loss of rent. The policy guideline states, in part:

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

The landlord testified to efforts to find a replacement tenant in the month of January 2019 including posting on online rental sites. The landlord testified he located a suitable replacement tenant with a new tenancy agreement commencing February 1, 2019.

Considering the evidence provided by the landlord, I am satisfied the landlord made reasonable efforts to mitigate loss.

Considering the uncontradicted evidence of the landlord, I find the tenant failed to provide notice as required to end the tenancy as a result of which the landlord has incurred a loss of rent for one month for which he is entitled to a monetary award. The landlord is therefore entitled to a monetary award in the amount of \$1,325.00 being rent for the month of January 2019.

As the landlord is successful in the landlord's claim, the landlord is entitled to reimbursement of the filing fee in the amount of \$100.00.

Further to the provisions of section 72, the landlord is entitled to offset the security deposit against the monetary award.

I therefore award the landlord a monetary order in the amount of \$762.50 calculated as follows:

ITEM	AMOUNT
Rent – month of January 2019	\$1,325.00
Reimbursement of the filing fee	\$100.00
(less security deposit)	(\$662.50)
Monetary Order	\$762.50

Conclusion

I grant a monetary order in the amount of **\$762.50**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and 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: May 10, 2019

Residential Tenancy Branch