



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKC Holdings Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order of \$460.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for lost rental income, and to recover the cost of her Application filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the decision would be emailed to both Parties and any orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on September 1, 2017, running to August 31, 2018, and was then on a month-to-month basis. The Parties agreed that the Tenant owed the Landlord a monthly rent of \$940.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$460.00, and no pet damage deposit. The Parties agreed that they did move-in and move-out condition inspections of the rental unit.

The Landlord stated in her Application that:

The Tenant gave late notice on January 18, 2019 in writing and vacated January 30, 2019. Therefore he did not give proper one month's notice as required by lease. The Landlord advertised promptly, but was unable to attract a tenant and as of this date [February 13, 2019] the suite is not rented. Lease paragraph 5 limits the amount of liquidated damages to \$460.00, which is claimed as rental loss.

In the hearing, when I asked the Tenant when he gave the Landlord the notice to end tenancy, he initially said that he slid the handwritten notice under her door on January 2nd or 3rd, but then he quickly changed it to December 31st.

He said it was signed, dated and had the rental unit address and the reason for leaving. He said there were no landlord/tenant issues. He did not go into his reasons for ending the tenancy, but he said that his way of giving notice was indicative of the relaxed, easy-going relationship that he had with the Landlord.

The Landlord said that the Tenant is not being truthful about having slid the note under her door on December 31, 2018. She said the Tenant sent her the following text message on January 10, 2019:

Hey [Landlord]

Wanted to give you the heads up that I will be leaving at the end of the month.
Going to move in with my family....

The Landlord said the text also provided the Tenant's forwarding address.

The Landlord submitted a copy of the handwritten note that the Tenant gave her in January 18, 2019:

January 18, 2019

Hello [Landlord]

I am following up regarding my notice to end tenancy, as I mentioned on January 10th, 2019 I would be moving back home and will be leaving January 31, 2019. To date I have not heard from you to arrange any showings? Please let me know when we can arrange the walk out on the 31st. I have been very flexible and accommodating during all the events, floods and stress I have had to endure with the last two tenants above my unit and hope that you can be just as accommodating as I have been.

Once again my forwarding address is [address provided].

Sincerely, [Tenant's name and signature]

The Landlord submitted a copy of the tenancy agreement and pointed out clause five, which is for liquidated damages. This clause states:

. . . if the tenant provides the Landlord with notice, whether written, oral or by conduct of an intention to breach this Agreement and end the tenancy by vacating and does vacate before the end of an fixed term, the tenant will pay to the landlord the sum of \$460.00 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

The Landlord said that she advertised the rental unit as soon as possible after receiving the Tenant's notice. However, she said there was another bachelor unit available on an upper floor at the same time, and people wanted to look at that, not the Tenant's ground level unit. She said she was only able to show the Tenant's rental unit once.

Analysis

Section 45 of the Act sets out a tenant's responsibilities for giving a landlord notice to end the tenancy:

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.

I find that the Tenant's handwritten notice submitted by the Landlord references the Tenant's previous notice of ending the tenancy on January 10, 2019, not December 31, 2018. Accordingly, I find it is more likely than not that the Tenant gave the Landlord insufficient notice of the end of the tenancy, pursuant to section 45 of the Act.

The Landlord said she did not find a new tenant until February 17, 2019, so she was without rent for more than the first half of February 2019. However, the Landlord said she was satisfied with receiving half a month's rent from the Tenant in the amount of \$460.00.

Section 7 of the Act addresses a party's rights and responsibilities involving complying with the Act, regulation and/or tenancy agreement:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(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.

Given the evidence before me overall, I find that the Tenant did not comply with section 45 of the Act, and that as a result, the Landlord was unable to re-rent the unit right away. As a result, she suffered a loss of half a month's rental income in February 2019.

I find that the Landlord tried to minimize the loss by advertising for a new tenant, but that she was unable to find one until February 17, 2019. I, therefore, award the Landlord a monetary order of **\$460.00** from the Tenant. I authorize the Landlord to retain the security deposit in order to satisfy this award. I also award the Landlord recovery of the **\$100.00** Application filing fee from the Tenant.

Conclusion

The Landlord's claim for retaining the security deposit is successful in the amount of \$460.00. The Landlord is also awarded recovery of the \$100.00 filing fee for this Application from the Tenant.

I grant the Landlord a monetary order under section 67 of the Act from the Tenant in the amount of **\$100.00**.

This order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: June 21, 2019

Residential Tenancy Branch