



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNSD FFL MNDCL-S

Introduction

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

- a monetary order for a return of all or a portion of the tenant's security deposit pursuant to section 38; and,
- authorization to recover the filing fee for this application pursuant to section 72.

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

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

The landlords attended the hearing. The landlords had full opportunity to provide affirmed testimony, present evidence, and make submissions.

The tenants did not attend the hearing. I kept the teleconference line open for the duration of the hearing time to allow the tenants the opportunity to call. The teleconference system indicated only the landlords and I had called into the hearing. I confirmed the correct participant code was provided to the tenants.

The landlords testified that the tenants were served the notice of dispute resolution package on April 20, 2019 by registered mail. The landlords provided the Canada Post

tracking number which is referenced on the first page of this decision. The landlords testified that the Canada Post records indicated that the tenants signed for the receipt of the notice of dispute resolution package. I find that the tenants were deemed served with this package on April 15, 2019, five days after the landlords served it, in accordance with sections 89 and 90 of the *Act*.

Preliminary Matter – Non-Appearance of Tenants at the Hearing

The applicant tenants did not appear at the hearing. Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing – If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.

As the applicant tenants did not attend the hearing, and in the absence of any evidence or submissions, I order the tenants' application be dismissed without leave to re-file.

Issue(s) to be Decided

Are the landlords 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?

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

Are the landlords entitled to recover the filing fee for this application pursuant to section 72?

Background and Evidence

The landlords testified that the parties signed a fixed term tenancy on December 9, 2018. The tenancy agreement went from January 1, 2019 to January 1, 2020. The monthly rent was \$2,300.00 and the tenants paid a \$2,300.00 security deposit. The landlords testified that the tenants moved in on December 10, 2018.

The landlords testified that tenants notified the landlords on December 31, 2018 that they no longer wanted to rent the property. The landlords testified that the tenants vacated the property a few days later. The landlords stated that the rental unit was left

in acceptable condition and the landlords are not making a claim for damage to the rental unit.

The landlords testified that they immediately marketed the rental online classified networks to find an alternative tenant. The landlord was not able to find another tenant until March 1, 2019. The new tenant pays the same rent of \$2,300.00 per month. The landlord is making a claim of \$4,600.00 for loss of rent from tenants' breach of the tenancy agreement.

Analysis

The landlords seek 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 landlords 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 tenants notified the landlord on December 31, 2018 that she they were ending the tenancy immediately even though the parties had a fixed term tenancy with a stated end date of January 1, 2020. 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 in January and February 2019.

In addition, I am satisfied that the landlords have provided sufficient evidence to establish that they have taken reasonable measures to mitigate their loss. The tenant did not provide barely any time to find a replacement tenant before the next monthly rent was due on January 1, 2019. I find that the landlords took reasonable measures by immediately marketing the rental unit on online classified services.

Accordingly, I find that the landlords are entitled to a monetary order of \$4,600.00 for loss of rent from January 2019 and February 2019.

Based on the undisputed testimony of the landlords and the tenancy agreement, I find that the landlord holds a security deposit of \$2,300.00 which may be deducted from the damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlords have been successful this matter, I award the landlords \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

Accordingly, I find that the landlords are entitled to a monetary order of \$2,400.00, calculated as follows.

<u>Item</u>	<u>Amount</u>
Loss of rent January 2019	\$2,300.00
Loss of rent February 2019	\$2,300.00
Less security deposit	-\$2,300.00
Filing fee	\$100.00
Total	\$2,400.00

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlords are permitted to retain the entirety of the security deposit.

I grant the landlords a monetary order in the amount of **\$2,400.00**. If the tenants fail to comply with this order, the landlord 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: June 10, 2019

Residential Tenancy Branch