



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STRATFORD HALL FOUNDATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FFL MNDCL-S MNDL-S MNRL-S

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 compensation for monetary loss or money owed 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.

GB ("landlord") appeared as agent for 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.

At the beginning of the hearing the landlord requested an amendment of the landlord's name. As neither party was opposed, the landlord's name was amended.

The tenant confirmed receipt of the landlord's dispute resolution application ('Application'). In accordance with section 89 of the Act, I find that the tenant was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for monetary losses?

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

Background and Evidence

This month-to-month tenancy began on February 1, 2018, with monthly rent set at \$1,575.00, payable on the first of the month. The landlord collected a security and pet damage deposit in the amounts of \$787.50 each deposit, which the landlord still holds.

The landlord is requesting monetary compensation as follows:

Loss of Rental Income for February 1-14, 2018	\$787.50
Replacement of Damaged Blinds	3.36
Filing Fee	100.00
Total Monetary Award Requested	\$890.86

The tenant agreed in the hearing to compensate the landlord \$3.36 for the damage to the blinds. The landlord is seeking a monetary order in the amount of \$787.50 for the loss of rental income as the tenant failed to give proper notice as required by the *Act*. The tenant does not dispute that she had moved out on January 31, 2019 after giving notice to the landlord on January 11, 2019. The landlord testified that they mitigated the tenant's exposure to their losses by advertising the unit as soon as possible, and they were able to re-rent the rental unit for February 15, 2019 at the same monthly rent.

The tenant is disputing the monetary claim because she feels that the landlord failed to mitigate their losses by removing the online posting early, and by failing to consider a prospective tenant that the tenant had referred. The tenant testified that the landlord had only re-posted the advertisement when the tenant had requested it. The landlord does not dispute the fact that the original posting was removed. The landlord testified that they had originally posted the unit for rent on January 14, 2019, but had taken the posting down from January 15, 2019 to January 21, 2019 due to the popularity of the posting, and the volume of applicants that they had received from the initial posting. The landlord testified that they had removed the posting in order to be able to focus on reviewing the applications received, and check references. The landlord testified that they had to do their due diligence in selecting a suitable tenant, and that included reviewing all applicants, including the one referred to them by the former tenant. The landlord testified that they had filled the vacancy as soon as possible for February 15, 2019, and they could not reasonably fill the vacancy for February 1, 2019 on such short notice since most tenants would require time to make proper arrangements to move.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 45 of the *Residential Tenancy Act* reads in part as follows:

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 did not end this tenancy in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this tenancy. The evidence is clear that the tenant did not comply with the *Act* in ending this periodic tenancy as they never gave notice in a manner required by section 45(1) of the *Act*. I, therefore, find that the tenant vacated the rental unit contrary to section 45 of the *Act*. The evidence of the landlord is that they were able to find a new tenant for the same monthly rent for February 15, 2019, and therefore is requesting a monetary order for the loss of rental income for February 1 to February 14, 2019.

I am satisfied that the landlord had made an effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for half of February 2019, as is required by section 7(2) of the *Act*. I am satisfied that the landlord had made efforts to fill the vacancy as soon as possible. Although the landlord has an obligation to mitigate the tenant's exposure to their losses, this obligation is balanced with the landlord's right to screen prospective tenants, and fill the vacancy with a suitable tenant. I find the landlord's explanation for why they had temporarily removed the posting to be reasonable, and I find that the fact that they were able to find a new tenant for February 15, 2019 at the same monthly rent supports the landlord's efforts to mitigate the tenant's exposure to their losses. Accordingly, I find that the landlord is entitled to a monetary order in the amount of \$787.50 in satisfaction of the lost rental income due to the tenant's failure to comply with section 45(1) of the *Act*.

As the tenant agreed to compensate the landlord \$3.36 for the blinds, the landlord will be given a monetary order for this amount.

As the landlord was successful with their application, I find that the landlord is entitled the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenant's security and pet damage deposits of \$787.50 each. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's deposits in satisfaction of the monetary claim. The remaining amount will be returned to the tenant.

Conclusion

I allow the landlord's monetary claim for monetary losses and money owed, as well as for recovery of the filing fee. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's deposits in satisfaction of the monetary claim. The remaining amount will be returned to the tenant. I issue a Monetary Order in the amount of \$684.14 to the tenant for the return of the remaining amount of her deposits.

Loss of Rental Income for February 1-14, 2019	\$787.50
Replacement of Damaged Blinds	3.36
Filing Fee	100.00
Less Deposits Held by Landlord	-1,575.00
Total Monetary Order to Tenant	\$684.14

The tenant is provided with this Order in the above terms and the landlord(s) must be served with a copy of this Order as soon as possible. Should the landlord(s) 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: July 2, 2019

Residential Tenancy Branch