



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAY VIEW APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FFL MNDCL-S

Introduction

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

- a monetary order for money owed or compensation 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.

DM ('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 section 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?

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

Background and Evidence

This fixed-term tenancy began on February 1, 2019, and was to end on January 31, 2020. Monthly rent was set at \$1,000.00, payable on the first of the month. The tenants

paid a security deposit in the amount of \$500.00, which the landlord still holds. The tenants do not dispute that they had moved out before the end of the fixed-term tenancy on March 31, 2019.

The landlord's agent testified that the tenants gave notice on March 13, 2019 that they would be moving out on March 31, 2019. The landlord's agent testified that they were able to re-rent the unit for May 1, 2019, for \$1,050.00 per month. The landlord's agent testified that they had filled the vacancy by contacting prospective tenants from a previous listing that they had. The landlord is seeking compensation in the amount of \$500.00 for loss of rental income due to the tenants' failure to comply with the *Act* and tenancy agreement. The landlord's agent noted that the tenants indicated on the move-out inspection report, dated March 31, 2019, that they agreed to a deduction in the amount of \$500.00 from their security deposit. The landlord included a copy of the tenancy agreement as well as the move-in and move-out inspection reports.

The tenants are disputing the landlord's application as they believe that the landlord did not suffer any losses. The tenants testified that they were told by the property manager that their rental unit was re-rented for the next day, April 1, 2019. The landlord disputes this.

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 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 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 the landlord is only claiming \$500.00 for the lost rental income for April 2019.

Although the tenants' testimony is that the landlord did not suffer any losses as they were informed that the unit was re-rented for April 1, 2019, I find their testimony alone is not sufficient to support the credibility or reliability of another party's statement. The tenants did not provide any sworn witness testimony or witness statements to support their claim. I find that the landlord had provided clear and detailed testimony as to the re-rental of the rental unit. I am satisfied that the landlord had made an effort to mitigate the tenants' exposure to the landlord's monetary loss of rent for April 2019, as is required by section 7(2) of the *Act*. Furthermore, I find that the landlord had provided evidence to support that the tenants had agreed to a \$500.00 deduction. Accordingly, I find that the landlord is entitled to a monetary order in the amount of \$500.00 in satisfaction of the lost rental income due to the tenants' failure to comply with sections 44 and 45 of the *Act*.

I find that the landlord's Application has merit and that the landlord is entitled to recover the fee for filing this Application.

The landlord continues to hold the tenants' security deposit of \$500.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$500.00 of the tenants' security deposit in satisfaction of the monetary claim.

Conclusion

I allow the landlord a monetary award of \$500.00 for the lost rental income due to the tenants' failure to comply with sections 44 and 45 of the *Act*. I also allow the landlord's application to recover the filing fee. I allow the landlord to retain the tenants' security deposit in satisfaction of their monetary claim. I issue a Monetary Order in the amount of \$100.00 in the landlord's favour for the remaining \$100.00 owed to the landlord.

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(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: August 6, 2019

Residential Tenancy Branch