



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EUROWEST DEVELOPMENTS
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

On May 1, 2019, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit and pet damage deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing and both Tenants attended the hearing as well. All parties provided a solemn affirmation.

The Landlord advised that she served each Tenant a Notice of Hearing and evidence package by registered mail on May 9, 2019 and the Tenants confirmed that they received these packages. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenants were each served the Landlord’s Notice of Hearing and evidence package.

The Tenants advised that they did not serve their evidence to the Landlord. As such, this evidence was excluded and not considered when rendering this decision. The Tenants were permitted to provide testimony with respect to this evidence, however.

At the start of the hearing, the Landlord advised that she was seeking compensation in the amount of **\$150.00** due to required weeding that was not done, and because of pet waste that was not cleaned up around the property. However, she stated that the Tenants had returned to the rental unit and rectified these issues. Therefore, she was no longer seeking compensation for this claim. Consequently, I have dismissed this claim in its entirety.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on August 1, 2018 as a fixed term tenancy of one year; however, the tenancy ended when the Tenants gave up vacant possession of the rental unit on April 30, 2019. Rent was established at \$1,750.00 per month, due on the first day of each month. A security deposit of \$875.00 and a pet damage deposit of \$150.00 were also paid. The Landlord submitted into evidence a tenancy agreement that was signed by both parties on July 10, 2018.

All parties agreed that the Tenants provided the Landlord with their forwarding address in writing by email on April 30, 2019.

The Landlord advised that the Tenants gave written notice to end their tenancy on April 2, 2019 stating that they would be vacating the rental unit as of April 30, 2019. She submitted that she took steps to mitigate this loss by immediately advertising the rental unit online. She advised that due to the late notice, she was only able to find new tenants for June 1, 2019. However, out of these four prospective tenants, one offered to start paying rent as of May 15, 2019 instead of June 1, 2019. As such, she is seeking compensation in the amount of **\$875.00** for the lost portion of rent in May 2019.

Tenant L.S. advised that they were not apprised of the results of the Landlord's search for new tenants and they were only advised of a prospective new, incoming tenant on Easter weekend.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Landlord had the Tenants' forwarding address in writing on April 30, 2019. As the tenancy ended on this date as well, I find that this is the date which initiated the 15-day time limit for the Landlord to deal with the deposits. Furthermore, the pet damage deposit can only be claimed against if there is damage due to the pets. As the Landlord advised of damage that was due to the pets, the Landlord was permitted to apply against this deposit as well. The undisputed evidence before me is that the Landlord made this Application to claim against the deposits on May 1, 2019. As the Landlord complied with the requirements of the *Act* by applying within the legislated timeframes, I am satisfied that the doubling provisions do not apply to the deposits.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for lost rent, there is no dispute that the parties entered into a fixed term tenancy agreement from August 1, 2018 ending July 31, 2019, yet the tenancy effectively ended when Tenants gave up vacant possession of the rental unit on April 30, 2019. Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenants must give written notice to end a tenancy. As well, this notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy.

Given that the Tenants' notice to end the tenancy was effective for a date earlier than the end of the fixed term tenancy, I am not satisfied that the Tenants ended the Tenancy in accordance with the *Act*. Therefore, I find that the Tenants vacated the rental unit contrary to Section 45 of the *Act*. Moreover, I find that the evidence indicates that as a result of the Tenants' actions, the Landlord could have suffered a rental loss.

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Additionally, in claims for loss of rental income in circumstances where the Tenants end the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Based on the evidence before me, I am satisfied that the Tenants did not end the tenancy in accordance with the *Act*. In addition, given that their notice was provided on April 2, 2019 effective for April 30, 2019, I also find that the Tenants gave the Landlord minimal written notification that they were ending the tenancy and vacating the rental unit.

I am satisfied from the Landlord's testimony that she made attempts to re-rent the rental unit as quickly as possible after receiving this short notice on April 2, 2019. As the Landlord was able to re-rent the rental unit on May 15, 2019, I am satisfied that the Tenants are responsible for the portion of May 2019 rent that was lost. Consequently, I grant the Landlord a Monetary Order in the amount of **\$875.00** to satisfy the Landlord's loss for rent owing for the month of May 2019.

As the Landlord was successful in her claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the amount awarded.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

May 2019 rental loss	\$875.00
Recovery of filing fee	\$100.00
Security deposit	-\$875.00
Pet damage deposit	-\$150.00
TOTAL MONETARY AWARD	\$50.00

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$50.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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 9, 2019

Residential Tenancy Branch