



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL-S MNRL-S

Introduction

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

- a Monetary Order for unpaid rent, damages and loss pursuant to section 67;
- authorization to retain the security and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this teleconference hearing, which lasted approximately 15 minutes. The line remained open throughout the hearing. The Notice of Hearing was confirmed to provide the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that they served each of the tenants with their application for dispute resolution and evidence by registered mail sent on or about May 13, 2019. The landlord provided two valid Canada Post tracking numbers as evidence of service. Based on the evidence I find that each tenant is deemed served with the landlord's materials in accordance with sections 88, 89 and 90 of the Act on May 18, 2019, five days after mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposits for this tenancy?

Is the landlord entitled to recover their filing fee from the tenants?

Background and Evidence

This fixed term tenancy began on March 1, 2019. The monthly rent was \$1,780.00 payable by the first of each month. A security deposit of \$975.00 was collected at the start of the tenancy and is still held by the landlord.

The tenants gave notice to end the tenancy on March 27, 2019 and vacated the rental unit shortly thereafter. The tenants failed to pay rent for April 2019. The landlord seeks the equivalent of one month's rent in the amount of \$1,780.00.

The landlord says that they filed a previous application seeking a monetary award but the tenants failed to provide accurate information regarding service. The landlord seeks the filing fee for the earlier application.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence of the landlord that monthly rent for this tenancy is \$1,780.00 payable by the first of each month. I accept that the tenants gave written notice to end the tenancy on March 27, 2019.

Section 45(2) of the *Act* provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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. Furthermore, the *Act* sets out that a tenant may not end a tenancy on a date earlier than specified in the tenancy agreement.

Further, section 26(1) of the *Act* provides that a tenant must pay rent when due under the tenancy agreement, whether or not the landlord complies with the *Act*, regulation, or the tenancy agreement.

I accept the evidence that the tenants provided written notice of their intention to end the tenancy on March 27, 2019. As a result, I find that the effective date of the notice was April 30, 2019. Therefore, I find that the tenants were obligated to pay the rent for April 1, 2019 in the amount of \$1,780.00 and issue a monetary award in the landlord's favour in that amount accordingly.

I accept the evidence of the landlord that the tenants failed to provide an accurate service address resulting in the landlord filing and subsequently cancelling their application. I find that the filing fee for the earlier application was incurred by the landlord as a result of the tenants' actions. As such, I find that the landlord is entitled to a monetary award of \$100.00, the cost of filing the earlier application.

As the landlord's application was successful the landlord is entitled to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary award in the landlord's favour in the amount of \$1,005.00 as against the tenants which allows the landlord to recover the unpaid rent, the filing fee for this and the previous application and retain the tenant's deposit.

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 20, 2019

Residential Tenancy Branch