



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with their application, amendment and evidence by registered mail sent to the address provided by the tenant on April 26, 2019. The tenant disputed service but testified that they were in receipt of all of the landlord's materials through the Branch. The landlord provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant has been sufficiently served with the landlord's materials in accordance with section 71(2)(c) of the *Act*.

The landlord confirmed receipt of the tenant's evidence. Based on the testimony I find that the landlord was served with the tenant's materials in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the tenant's security deposit?
Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The parties agree on the following facts. This fixed-term tenancy began in December, 2018 and ended on March 31, 2019. The written tenancy agreement provides that the tenancy was scheduled to end in November 2019. The monthly rent was \$1,100.00 payable by the first of each month. A security deposit of \$550.00 was collected and is held by the landlord. The tenant provided a forwarding address in writing by letter dated April 12, 2019.

The landlord submits that the tenant first approached them to explore the possibility of ending the tenancy on February 28, 2019. The parties discussed and agreed to an end of tenancy date of March 31, 2019 on March 5, 2019. The parties sought a new occupant for the rental unit. The landlord found an acceptable new occupant but they were unable to begin their tenancy until April 20, 2019. The landlord seeks the equivalent of 19 days rent in the amount of \$696.67 for the month of April 2019.

The tenant submits that they gave clear notice to the landlord to end the tenancy on February 28, 2019 and provided several candidates to occupy the rental unit after the tenancy ended. The tenant testified that they believed the new occupant selected by the landlord would begin their tenancy on April 1, 2019. The tenant submits that any losses incurred by the landlord is not due to their actions and no monetary amount is payable to the landlord.

Analysis

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord

must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.” In this case, irrespective of whether notice was provided on February 28, 2019 or March 5, 2019, the tenant breached the terms of the fixed-term tenancy agreement by providing an end of tenancy date of March 31, 2019, earlier than allowed.

I find that the landlord acted reasonably by seeking a new occupant and vetting candidates. While I accept that the tenant provided some candidates I find that there is no obligation on the landlord to accept the candidates suggested by the tenant. The landlord ultimately chose a new occupant who was not one of those suggested by the tenant. Nevertheless, I find that the landlord made reasonable efforts to find a new tenant to move in to the rental unit.

Section 67 of the *Act* states, if damage or loss results from a party not complying with this Act, the regulations or a *tenancy agreement*, the director may determine the amount of, and order that party to pay, compensation to the other party. I find that a violation of the tenancy agreement occurred by the tenants, that the landlord had to make efforts to rectify this violation and that landlord is entitled to compensation for their losses.

I accept the submission of the landlord that the amount of their losses is \$696.67, the equivalent of 19 days of rent for this tenancy.

The landlord has also applied to retain the security deposit from the tenant. Section 38 of the *Act* requires the landlord to either return a tenant’s security deposit in full or file a claim against a tenant’s deposit within 15 days of the *later* of the end of the tenancy or the date a tenant’s forwarding address is received in writing.

In the present case the tenant provided a forwarding address by letter dated April 12, 2019 and the landlord filed their application on April 24, 2019. I find that the landlord filed their application within the timeline provided under the *Act*.

Subsection 4 of this section states that, “A landlord may retain an amount from a security deposit or a pet damage deposit if, after the end of the tenancy, the director orders that the landlord may retain the amount.” I find that the landlord has suffered a loss as a result of this tenancy and may therefore retain the security deposit pursuant to section 38 and 72 of the *Act* against the monetary award to which they are entitled.

As the landlord's application was successful the landlord may also recover the filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$246.67 under the following terms:

Item	Amount
Loss of Rental Income (19 days x \$1,100/30 = \$696.67)	\$696.67
Less Security Deposit	-\$550.00
Filing Fees	\$100.00
Total Monetary Order	\$246.67

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 1, 2019

Residential Tenancy Branch