



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirms its email address as provided in the Landlord’s application.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy of a room in a house, under written agreement, started on April 1, 2019 for a fixed term to end August 31, 2019. Rent of \$700.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$350.00 as a security deposit.

The Landlord states that the Tenant moved out of the unit without notice on June 2, 2019. The Landlord states that the Tenant paid no rent for June 2019. The Landlord

received the Tenant's forwarding address in writing on June 4 or 5, 2019. The Landlord states that after the Tenant moved out of the unit no advertisement was placed to re-rent the unit as the Landlord was going to move into the unit at the end of August 2019. After informing the Landlord of the requirement under the Act to mitigate losses being claimed the Landlord stated that believes it did advertise the unit. The Landlord provides no copy of any advertisement. The Landlord claims \$700.00 for June 2019.

The Tenant states that it moved out of the unit on June 1, 2019. The Tenant states that on May 23 or 24, 2019 the Landlord was verbally informed that the tenancy would end for June 1, 2019. The Tenant states that it had to end the tenancy as another tenant was threatening the Tenant and using drugs. The Tenant states that it should not have to pay rent because its safety was breached. The Tenant states that a report was made to the police.

The Landlord states that the day after the Tenant reported the matter to the Landlord took steps to deal with the matter by contacting the police and the Residential Tenancy Branch (the "RTB"). The Landlord states that the problem tenant entered into a mutual agreement with the Landlord to end the tenancy and moved out of the unit on June 15, 2019.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Rent is no longer payable after a tenancy ends. Section 44(1)(d) of the Act provides that a tenancy ends when a tenant vacates the unit. As the Tenant gives evidence that it moved out of the unit on June 1, 2019, as the Landlord has not provided any evidence to support a move-out of the unit on June 2, 2019 and as the Landlord holds the burden of proof, I find on a balance of probabilities that the tenancy ended June 1, 2019. As rent is payable on the first day of each month,

I find that the Landlord has substantiated unpaid rent for one day in the pro-rated amount of **\$23.33** ($\$700.00/30 = 23.33$).

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Given the Tenant's undisputed evidence that it informed the Landlord on May 23 or 24, 2019 that the tenancy would end for June 1, 2019 and given that the tenancy agreement provided that the tenancy would not end until August 31, 2019, I find that the Landlord has substantiated that the Tenant breached the Act and the tenancy agreement by ending the tenancy before the end of the fixed term. As the Landlord gave contradictory evidence of advertising the unit I prefer the Landlord's evidence given prior to being informed of the Act's requirements and find that the Landlord did not advertise the unit for rent after the Tenant moved out. Based on the Landlord's evidence that the Landlord did nothing to reduce or mitigate any lost rental income claimed I find that the Landlord has not substantiated an entitlement to any lost rental income and I dismiss the claim for further rental monies to the end of June 2019. As the Landlord's application has met with some success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$123.33**.

Deducting the **\$123.33** from the security deposit plus zero interest of **\$350.00** leaves **\$226.67** to be returned to the Tenant forthwith.

Conclusion

I Order the Landlord to retain \$123.33 from the security deposit plus interest in the amount of \$900.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$226.67**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: September 16, 2019

Residential Tenancy Branch