



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

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

- a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The executrix of the tenant's estate (the "executrix") and the landlords attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlords testified that they received the tenant's estate's application for dispute resolution via registered mail but could not recall on what date. I find that the landlords were served with the tenant's estate's application in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

At the hearing the executrix requested to amend the estate's claim to include a monetary claim for damage and compensation. The landlords agreed to the proposed amendment. Pursuant to section 64 of the *Act*, I amend the tenant's estate's application to include a monetary claim for damage and compensation, pursuant to section 67 of the *Act*.

Issues to be Decided

1. Is the tenant's estate entitled to a Monetary Order for the return of the security deposit, pursuant to sections 38 and 67 of the *Act*?
2. Is the tenant's estate entitled to a Monetary Order for damage and compensation, pursuant to section 67 of the *Act*?
3. Is the tenant's estate entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in April of 2016 and ended in October of 2018. Monthly rent in the amount of \$800.00 was payable on the first day of each month. The subject rental property is a basement suite of a house and the landlords reside above the suite.

Both parties agree to the following facts. On September 30, 2018 the tenant sent the landlords a delayed text, informing the landlords that he had taken his own life and that the landlords should not enter the suite but should call the authorities. The landlords entered the lower suite in an attempt to save the tenant's life but were too late. The tenant's body was removed from the subject rental property in the early hours of October 1, 2018.

Both parties agree to the following facts. The tenant's estate paid for October 2018's rent in the amount of \$800.00. The executrix and the tenant's mother stayed overnight at the subject rental property on and off from October 2, 2018 to October 12, 2018 as they cleaned out the subject rental property, made funeral arrangements and dealt with their loss. On October 12, 2018 the landlords texted the executrix and requested that no one spend the night at the subject rental property going forward and that all of the tenant's belonging be removed by October 19, 2018. After receiving the above text, no persons stayed overnight at the subject rental property and the subject rental property was cleaned out by October 19, 2018.

The landlords testified to the emotional trauma they suffered after finding the body of their tenant after he took his own life. The landlords, whose children played with the tenant's children, testified that they found it extremely difficult to have people they did not know directly below them and were afraid that a distraught family member might take their life in the basement suite. The landlords testified that they tried to be kind and compassionate during this difficult time but found it too difficult to have anyone spend the night in the basement suite. The landlords testified that it was their own emotional upset which lead to the October 12, 2019 text.

The executrix testified that the estate paid the landlords the October 2018 rent and so she, as executrix had a right to stay at the subject rental property until the end of October 2018. The estate of the tenant is claiming 40% of the rent paid for the month of October (\$320.00) as the suite was only occupied for 60% of the month.

The estate is also claiming \$264.50 for the cost of a hotel from October 12-14 (two nights) as the executrix was not able to sleep at the subject rental property and needed accomodation to attend the funeral and finish emptying the subject rental property. A receipt for same was entered into evidence.

The executrix withdrew the estate's claim for double the security deposit.

The landlords testified that they did not believe that the executrix and other members of the tenant's family were entitled to overnight occupation of the subject rental property for the month of October 2018.

Analysis

Section 1 of the *Act* defines "tenant" as including the estate of a deceased tenant.

Section 30 of the *Act* states that a landlord must not unreasonably restrict access to residential property by

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

Since the *Act* includes the estate of a deceased tenant in its definition of a tenant, the estate is entitled to unrestricted access to the subject rental property, including overnight occupation, pursuant to section 30 of the *Act*, for the duration of the tenancy. I find that as a representative of the estate of the deceased tenant, the executrix was

entitled to possession of the subject rental property, including overnight occupation, and was permitted to have guests, until October 31, 2019.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that through no malicious or harmful intent, the landlords breached section 30 of the *Act* by restricting the estate's access to the subject rental property for the month of October 2018. I find that the estate of the tenant suffered a loss as a result of this breach. The estate did not have unfettered access to the subject rental property for 40% of the month and the executrix incurred the cost of a hotel. I find that the tenant's estate has proven the value of the loss and has not incurred unnecessary expenses due to the landlords breach of section 30 of the *Act*. I therefore find that the estate is entitled to recover \$584.50 in damages from the landlords for 40% of October 2018's rent as well as the cost of a hotel from October 12-14, 2018.

As the estate was successful in its application, I find that it is entitled to recover the \$100.00 filing fee from the landlords, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the tenant's estate in the amount of \$684.50.

The tenant's estate is provided with this Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords 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: September 27, 2019

Residential Tenancy Branch