



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDL-S

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- an order authorizing the landlord the recovery of the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted via teleconference and was attended by the landlord. No one was in attendance on behalf of the tenant. The landlord submitted documentary evidence that the tenant was served notice of this application and this hearing by registered mail on June 19, 2019. Based on the submissions of the landlord, I find the tenant was deemed served five days later in accordance to section 88 and 90 of the *Act*. Therefore, I continued in the absence of the tenant.

Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to the recovery of the filing fee?

Background, Evidence

The landlord's undisputed testimony is as follows. The fixed term tenancy began on April 1, 2019 and was scheduled to end on September 30, 2019, however; the tenant moved out on May 31, 2019 after giving notice on April 26, 2019. The tenant was obligated to pay \$525.00

per month in rent in and at the outset of the tenancy the tenant paid a \$275.00 security deposit which the landlord still holds. The landlord advised the tenant that the tenant could be liable for any loss of revenue as they were “breaking the lease”. The landlord testified that she advertised the unit aggressively immediately after receiving notice but was unable to rent it for June 2019. The landlord was able to rent the unit for July 1, 2019. The landlord is seeking the \$550.00 loss of revenue for June 2019 and the recovery of the \$100.00 filing fee.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I address the landlords claim and my findings as follows.

I find that the landlord and tenant entered into a fixed term tenancy for the period from April 1, 2019 to September 30, 2019.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,*
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) 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.*

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If the tenant does, she could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenant vacated the rental unit on May 31, 2019, before the completion of the fixed term on September 30, 2019. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of his tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a

landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises soon after receiving written notice of the tenant's intention to vacate the rental unit. The landlord posted an online rental advertisement immediately. The landlord made efforts to re-post and renew the advertisements to preserve priority on the website. As such, I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses and is entitled to the loss of revenue for June 2019 in the amount of \$550.00.

The landlord provided extensive documentation and undisputed testimony to support their application. The landlord is entitled to \$550.00 for loss of revenue for the month of June 2019.

The landlord is also entitled to the recovery of the \$100.00 filing fee for this application.

Conclusion

The landlord has established a claim for \$650.00. I order that the landlord retain the \$275.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$375.00.

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 24, 2019

Residential Tenancy Branch