



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Downtown Suites Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on October 11, 2019. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- permission to retain the security deposit to offset the rent owed; and,
- to recover the filing fee from the Tenant for the cost of this application.

The Landlord attended the hearing and provided testimony. The Landlord applied, and was granted an order for substituted service, allowing her to serve the Notice of Hearing and evidence to the Tenant by email. That order specified that the email would be deemed received after 3 days. The Landlord confirmed that they sent the Notice of Hearing, the substituted service decision, and evidence by email on July 12, 2019. Accordingly, I deem the Tenant has been sufficiently served with the Landlord's package on July 15, 2019, 3 days after it was sent via email to the address on the substituted service application.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

Background and Evidence

The Landlord stated that on May 10, 2019, the Tenant signed the Tenancy Agreement, and paid the security deposit in the amount of \$1,275.00. The tenancy was set to start on July 1, 2019. This Tenancy Agreement was provided into evidence. It shows that monthly rent was set at \$2,550.00 and was due on the first of the month and the tenancy was for a fixed term of one year.

The Landlord stated that the Tenant emailed her on June 25, 2019, saying that he wasn't going to move in, or pay for July rent. The Landlord stated they immediately reposted the ad, held a showing on June 27, 2019, and found a new Tenant that day. The new Tenant move in on July 24, 2019, at the same rate of rent. However, the rental unit was vacant from July 1 – July 23, 2019, due to the Tenant's short notice. The Landlord is seeking \$1,891.00, which equates to 23 days worth of rent ($\$2,550.00/31 \times 23$).

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

I note the Tenant signed the agreement, and paid the deposit on May 10, 2019.

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The Landlord is seeking to recover lost rent for the period from July 1 – July 23, 2019, the period of time that the unit was vacant. I turn to section 45 of the Act:

Tenant's notice

45 (2) 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.

I find the Tenant is liable to fulfill his obligations under the agreement, which includes paying rent, and giving proper notice to end the tenancy. I find the Tenant breached section 45 of the Act because he was not legally entitled to end the tenancy in the manner he did and as soon as he did.

I find the Tenant is responsible for rent for the period of time (23 days) the unit sat empty (amounting to \$1,891.00). I find the Landlord sufficiently mitigated her loss, and swiftly re-rented the unit.

Since the Landlord was successful in this application, I award her the recovery of the filing fee (\$100.00), pursuant to section 72 of the Act. Further, pursuant to section 72, I authorize the Landlord to retain the security deposit in full, to offset the rent she is owed, which leaves a balance owing by the Tenant in the amount of \$716.00.

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$716.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: October 11, 2019

Residential Tenancy Branch