



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1 OAK PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNRL-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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issue(s) 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 and Evidence

The landlord's testimony is as follows. The tenancy began on August 29, 2018 and ended on June 30, 2019. The tenant was obligated to pay \$900.00 per month in rent in advance and at the outset of the tenancy the tenant paid a \$450.00 security deposit and \$200.00 pet deposit. The landlord testified that the tenant did not give written notice until June 3, 2019. The landlord testified that they were unable to rent the unit for the month of July 2019 despite advertising the unit on Facebook and on their company website. The landlord testified that as a result of the

tenants' actions they incurred a rental loss and now seek to recover \$900.00 for loss of rent for the month of July 2019 as well as the \$100.00 filing fee for this application.

The tenant gave the following testimony. The tenant testified that he sent a text message to the landlord on May 30, 2019 to advise that he would be moving out by June 30, 2019. The tenant also provided notice by e-mail on May 31, 2019 and in writing on June 3, 2019. The tenant testified that he was very clear about his intentions and that the only source of communication with the landlord throughout the tenancy was by text messages and emails. The tenant testified that he should be given his deposits back.

Analysis

Both parties agreed that the tenant allowed the landlord to retain \$50.00 from his deposit at the move out inspection and that the amount of the deposits that the landlord holds is \$600.00.

I do find that the tenant gave written notice to end his tenancy on June 3, 2019; three days later than required as noted in section 45 of the Act. I have considered section 45 of the Act in making my decision, it states as follows:

Tenant's notice

- 45** (1) A tenant may end a periodic 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, and
 - (b) 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.

However, I have also turned my mind to the following in determining the outcome.

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.

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.

The landlord testified that they posted an advertisement for the unit on Facebook and on their company website as soon as they were given notice, however, the landlord did not provide documentation to corroborate that. The landlord testified that he only showed the unit one time during the month of June which reasonably indicates that what he was seeking was not viable at that time and steps should have been taken to mitigate the loss. The landlord did not make reasonable attempts to mitigate his losses by providing flexible move in terms, incentives, or a reduction in the rent sought. Based on the insufficient evidence before me and lack of supporting documentation to support their claim, I find that the landlord failed to discharge its duty under section 7(2) of the *Act* to minimize its losses; accordingly, I dismiss the landlords' application in its entirety. The landlord is to return the security deposit to the tenant.

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply. The landlord is to return the security deposit to the tenant. The tenant is granted a monetary order under section 67 of the *Act* for \$600.00.

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: October 21, 2019

Residential Tenancy Branch