



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROADSTREET PROPERTIES 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 January 21, 2020. 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. The Tenant did not attend the hearing. The Landlord stated that she sent the Tenant a copy of the Notice of Hearing and evidence by registered mail to the forwarding address provided to her on September 27, 2019. The Landlord provided tracking numbers to corroborate this. Pursuant to section 88 and 90 of the Act, I find the Tenant is deemed to have received these documents on October 1, 2019, the fifth day after their mailing.

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 she is seeking compensation because the Tenant failed to give proper notice when she moved out. The Landlord provided a tenancy agreement which specifies that the Tenant moved in on June 1, 2019, and she signed a fixed term agreement, lasting until May 31, 2020. The Landlord stated that she holds a security and pet deposit, totalling \$944.00. Monthly rent was set at \$1,468.00 and was due on the first of the month.

The Landlord stated that on July 24, 2019, the Tenant gave written notice that she was wishing to end the tenancy early, effective September 30, 2019. The Landlord stated they agreed to this with the Tenant and allowed the Tenant to break her lease, and leave early, at the end of September 2019. The Tenant's notice indicates she agreed to pay rent until the end of September.

The Landlord stated that they posted the suite for re-rent shortly after and managed to sign a new agreement on August 21, 2019, with new tenants. The Landlord stated the new agreement was set to start on October 1, 2019, since the Tenant was supposed to stay until the end of September. However, the Tenant called the Landlord on August 27, 2019, stating she would be moved out by August 31, 2019. The Landlord stated they immediately told the Tenant this was not what they agreed to but the Tenant left anyways.

The Landlord stated that she contacted the new Tenants to see if they could move in a month early, but they already had planned to move in October 1, 2019, and could not move in sooner. The Landlord stated there isn't much else they could do to mitigate because they had a signed agreement with the new Tenants for October 1, 2019. As a result, the unit sat vacant for September and the Landlord is seeking to recover rent for that month.

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.

The Landlord is seeking to recover lost rent for September 2019, totalling \$1,468.00. I note the Tenant was in a fixed term agreement at the time she gave her notice that she wanted to vacate. I also note the Landlord accepted the Tenant's notice, and allowed the Tenant to vacate at the end of September 30, 2019, as she requested. I find the parties agreed to end the tenancy on that date. I note that Tenant also explicitly agreed that she is responsible for rent until the end of September as part of this notice of intent to vacate form she gave to the Landlord.

I find the Tenant breached her agreement with the Landlord by moving out prior to the end of September 2019. The Tenant gave only a matter of days notice, on August 27, 2019, that she would be moving out at the end of that month. I further note that by that time, the Landlord had already re-rented the unit, and signed a new tenancy agreement commencing on October 1, 2019. I find the Tenant is responsible for rent for September, in full. I find the Landlord tried to get the new Tenants to move in early to mitigate the loss, but the Landlord's options to mitigate were limited, given the manner in which the Tenant left.

Ultimately, I find the Landlord is entitled to recover September rent in full.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize the deposits, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
September 2019 rent	\$1,468.00
Other:	\$100.00
Filing fee	
Less:	
Deposits held	(\$944.00)
TOTAL:	\$624.00

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$624.00**. 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: January 21, 2020

Residential Tenancy Branch