



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on January 24, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act, and for unpaid rent; and,
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

The Landlord and the Tenant both attended the hearing and provided testimony. The Tenant confirmed that her agent provided the Landlord with her forwarding address in writing at the move-out inspection on September 4, 2019. The Landlord provided proof of mailing to show that she sent the Notice of Hearing and evidence to this address on September 27, 2019. The Tenant stated she moved out of the country and did not get this package. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed served with this package 5 days after it was mailed, on October 2, 2019. The Landlord sent this package to the only forwarding address she had for the Tenant and the Tenant confirmed that this was the address of her house but since she left the country she did not sign for it. Regardless, I find the Landlord sufficiently served the Tenant with the application and evidence.

The Tenant did not submit any evidence.

Both parties were 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.

The Landlord stated that she did not provide the receipts for the cleaning costs and the disposal costs. As such, she stated she would withdraw her request for these items, and she would only be seeking liquidated damages and lost rent.

Issues to be Decided

- Is the Landlord entitled to a monetary order for damage or loss under the Act, and for unpaid rent?
- Is the Landlord authorized to retain all or a portion of the Tenant's security and pet deposit in partial satisfaction of the monetary order requested pursuant to section 38.

Background and Evidence

Both parties agree that:

- monthly rent was \$1,570.00 and was due on the first of the month.
- The Landlord holds a security deposit in the amount of \$785.00 and a pet deposit in the amount of \$785.00.
- The Tenant signed a fixed term tenancy agreement starting June 1, 2019, ending May 30, 2020.
- The tenancy ended and a move-out inspection was done on September 4, 2019.
- The Tenant's agent was present on September 4, 2019, and performed the walk through inspection with the Landlord, returned the keys, and gave the Tenant's forwarding address on behalf of the Tenant.

The Landlord stated she is seeking liquidated damages in the amount of \$500.00 because the Tenant breached the fixed term lease. The Landlord provided a copy of the Tenancy Agreement into evidence which states that the Tenant is liable to pay a liquidated damages clause in the event the lease is breached, and that it is not a penalty, but rather a genuine pre-estimate of the cost to re-rent the unit.

The Tenant does not deny that she agreed to this liquidated damages clause.

The Landlord is also seeking to recover September 2019 rent because they were never actually properly notified if the Tenant was going to end the tenancy, and when this was

to occur. The Landlord provided a chain of emails showing the parties had discussions around subletting and assigning the lease, but nothing was ever properly put in writing or formally requested. The Landlord stated that they had no idea when and if the Tenant was going to vacate the unit until September 4, 2019. The Landlord stated that their discussions, via email, were not sufficient for them to accept them as a written Notice to End Tenancy from the Tenant.

The Tenant stated that she tried her best to sublet the property after she got a job overseas. The Tenant stated that she spent most of July and August trying to find a suitable person to sublet to, but she acknowledged that she did not give any proper written Notice that she wanted to end the tenancy, nor did she formally apply to assign or sublease the unit. The Tenant stated that she had her agent attend the unit on September 4, 2019, to clear out most of her belongings, because by that time, she was already overseas and could not do it herself.

Analysis

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 Tenant. Once that has been established, the Landlord 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.

Based on all of the above, the evidence and the testimony provided at the hearing, I find as follows:

Liquidated Damages Clause

I note the tenancy agreement clearly specifies that the Tenant is responsible for liquidated damages in the amount of 1 month's rent. However, on this application the Landlord is only seeking \$500.00. I find the Landlord is entitled to this amount, as it was clearly laid out in the contract, and the reduced amount is a reasonable amount for re-rental costs.

September 2019 Rent

I note the following portion of the Act:

- 44** (1) *A tenancy ends only if one or more of the following applies:*
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:*
 - (i) section 45 [tenant's notice];*
 - (i.1) section 45.1 [tenant's notice: family violence or long-term care];*
 - (ii) section 46 [landlord's notice: non-payment of rent];*
 - (iii) section 47 [landlord's notice: cause];*
 - (iv) section 48 [landlord's notice: end of employment];*
 - (v) section 49 [landlord's notice: landlord's use of property];*
 - (vi) section 49.1 [landlord's notice: tenant ceases to qualify];*
 - (vii) section 50 [tenant may end tenancy early];*
 - (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;*
 - (c) the landlord and tenant agree in writing to end the tenancy;*
 - (d) the tenant vacates or abandons the rental unit;*
 - (e) the tenancy agreement is frustrated;*
 - (f) the director orders that the tenancy is ended;*
 - (g) the tenancy agreement is a sublease agreement.*
- 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.*

The Tenant was not entitled to give a Notice to End Tenancy for September 2019 under section 45, since she was still in a fixed term tenancy agreement until May of 2020. There is also no evidence to show the Tenant and the Landlord agreed to end the

tenancy in writing. Further, it appears the tenancy ended on September 4, 2019, when the Tenant's agent attended the unit, returned the keys and made it clear the Tenant was not returning. Given the lack of proper notice, the Landlord was unable to mitigate the rental losses for September, since the Tenant vacated the unit part way through the month. As such, I find the Tenant is responsible for this amount in full.

I award the landlord \$500.00 for liquidated damages and \$1,570.00.

Further, 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 successful in this hearing, I also order the Tenant to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution. Section 72 of the *Act* also allows me to authorize that the security and pet deposit, 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
Unpaid rent: September of 2019	\$1,570.00
Liquidated Damages	\$500.00
Filing Fee	\$100.00
Less:	
Security and pet Deposit currently held by Landlord	(\$1,570.00)
TOTAL:	\$600.00

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$600.00**. 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 24, 2020

Residential Tenancy Branch