



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL MNRL

Introduction

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

- and a monetary order for unpaid rent, money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:49 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord JB ("landlords") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that he had served the tenant by way of registered mail on September 20, 2019 to an address provided by the tenant. The landlord provided a tracking number during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on September 25, 2019, 5 days after mailing.

I note that the landlord wanted to address matters unrelated to the landlords' application. As no amendments have been received in accordance with RTB Rule 4.6, and the respondent has the right to review and respond to an amendment and supporting evidence, the landlord was informed that these matters could not be addressed as part of this hearing.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation he applied for?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified to the following facts as he did not submit any written evidence for this hearing. The landlord testified that both parties had signed a residential tenancy agreement on July 19, 2019 for a fixed-term tenancy to begin on September 1, 2019. The landlord testified that monthly rent was set at \$2,750.00, and a security deposit in the amount of \$1,375.00 was to be paid, although the tenant never paid this to the landlord. The landlord testified that the tenant never moved in, and no mutual agreement was ever signed to end this tenancy.

The landlord is seeking a monetary order in the amount of \$2,750.00 for loss of September 2019 rent, as well as \$63.00 for costs of registered mail used to correspond with the tenant.

The landlord testified that he never re-rented the rental unit, and resided there himself as of September 12, 2019.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

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:...

(b) *the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

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 landlord provided undisputed, sworn testimony that the tenant ended this tenancy in a manner that does not comply with the *Act*, as stated above. The landlords did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenant in regards to this tenancy.

Section 16 of the *Act* states the following:

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 evidence is clear that the tenant did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenant terminated this tenancy contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that he did not re-rent the home, and that he moved into the residence himself.

I am satisfied that the landlords had made an effort to mitigate the tenant's exposure to the landlord's monetary loss of rent for September 2019, as is required by section 7(2) of the *Act*. As stated in the landlord's own testimony, the landlord had moved into the residence himself instead of attempting to re-rent the rental unit. I find that the landlords failed to provide sufficient evidence of the losses they had suffered due to the tenant's actions. Accordingly, I dismiss the landlords' application of lost rental income without leave to reapply.

The landlord also applied for reimbursement of the costs of registered mailing the tenant. Section 72 of the *Act* only allows for the recovery of the filing fee, and not other costs associated with filing an application. As the landlord was not successful with this application, I dismiss the landlords' application for the recovery of the filing fee. I also

dismiss the landlords' monetary application for recovery of the cost of registered mailing without leave to reapply.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

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 16, 2020

Residential Tenancy Branch