



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirms receipt of the Landlord's evidence.

Preliminary Matter

The Landlord confirms that it included a claim for cleaning of the unit in its monetary order worksheet but did not make a claim for damages to the unit in the application.

The Landlord confirms that no amendment was made to the application to add a claim for damages to the unit.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims are limited to what is stated in the application. As the Landlord's application does not include a claim for damages to the unit and as the Landlord made no amendment to its application to add a claim for damages to the unit, I find that the Landlord may not now have its claim for damages to the unit considered and I dismiss that claim.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

IS the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Relevant Background and Evidence

The following are agreed facts: The tenancy under written agreement started on August 1, 2019 on a fixed term to end January 31, 2020. At the outset of the tenancy the Landlord collected a security deposit of \$625.00. Neither Party knows why the tenancy agreement sets out a security deposit of \$250.00 and the Landlord believes this to be an error. Rent of \$1,250.00 was payable on the first day of each month. The Tenant gave 9 days notice and moved out of the unit on September 30, 2019. The Landlord received the Tenant's forwarding address in the first week of October 2019.

The Landlord states that a day after it received the Tenant's notice it advertised the unit online on two websites for the same amount of rent. The Landlord states that it did not receive any interest or demand for a last-minute rental and that the Landlord was unable to obtain a new tenant for any sooner than a November 1, 2019 occupancy. The Landlord claims \$1,250.00 as lost rental income. The Tenant states that the Landlord did not provide the unit as advertised to the Tenant, that some areas were messy, that the Landlord's son came to the unit without notice, and that the building had deficiencies.

Analysis

Section 45(2) of the Act provides that 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.

Based on the Landlord's undisputed evidence that the Tenant gave notice to end the tenancy prior to the end of the fixed term I find that the Tenant has not complied with the tenancy agreement or Act. As the Tenant had other remedies under the Act to address any deficiencies with its rental, I consider that these deficiencies are not relevant to the Tenant's requirement not to end the tenancy before the end of the fixed term.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Given the Landlord's undisputed evidence of having advertised the unit as soon as it received the Tenant's notice to end tenancy, I find that the Landlord took reasonable steps to mitigate the loss of rental income suffered as a result of the Tenant's breach of the fixed term. Based on the Landlord's undisputed evidence that there was no demand for a unit on short term notice and the undisputed evidence that the Tenant did not comply with the fixed term tenancy I find that the Landlord has substantiated an entitlement to \$1,250.00. As the Landlord's claim has met with success, I find that the Landlord is also entitled to recovery of the \$100.00 filing fee for a total entitlement of \$1,350.00. Deducting the security deposit of \$625.00 plus zero interest leaves \$725.00 owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain security deposit plus interest of \$625.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$725.00**. If necessary, this order may be filed in the Small Claims Court and 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 Act.

Dated: February 07, 2020

Residential Tenancy Branch