



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Living
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant and the landlord's associate property manager attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenant was served with the landlord's application for dispute resolution and amendment package via registered mail. I find that the above packages were served on the tenant in accordance with the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

The tenant testified that she moved in on May 15, 2019. The tenancy agreement states that the tenancy began on June 1, 2019. The associate property manager testified that she had no evidence showing that the tenant moved in early.

Both parties agree to the following facts. This tenancy ended on November 16, 2019. This was originally a fixed term tenancy set to end on May 31, 2020. Monthly rent in the amount of \$1520.00 plus an \$80.00 parking fee were payable on the first day of each month. A security deposit of \$760.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenant provided the landlord with her forwarding address on November 16, 2019. The landlord applied for dispute resolution on November 28, 2019.

The associate property manager testified to the following facts. On October 4, 2019 the tenant provided notice to end tenancy effective November 30, 2019. The landlord found a new tenant to move into the subject rental property on December 24, 2019. The landlord is seeking lost rental income for 23 days in the amount of \$1,149.36.

I asked associate property manager what steps were taken to re-rent the subject rental property. The associate property manager testified to the usual steps taken to rent properties but was not able to testify as to what steps were taken in this case. No advertisements were entered into evidence. The new tenancy agreement signed by the new tenant was not entered into evidence. The associate property manager did not identify the rental rate of the new tenancy or the rental rate at which the property was advertised.

The tenant testified that she ended her tenancy early because of ongoing issues with the noise created by the elevator.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the claimant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

The landlord did not enter any evidence to prove that it started to advertise the subject rental property immediately after the tenant provided her notice to end tenancy or provide any evidence whatsoever as to what steps were taken to re-rent the unit. The new tenancy agreement was not entered into evidence and the associate property manager did not give testimony as to the rental rate secured for the new property or the rental rate the property was advertised for. Based on the above, I find that the landlord failed to prove the value of the loss suffered and failed to prove that it acted reasonably to minimize that loss. I therefore dismiss the landlord's claim without leave to reapply.

I find that the landlord applied to retain the tenant's security deposit in accordance with section 38 of the Act; however, because the landlord was not successful in this

application, I find that the landlord must return the tenant's security deposit in the amount of \$760.00 to the tenant.

Conclusion

The landlord's claim is dismissed without leave to reapply.

I issue a Monetary Order to the tenant in the amount of \$760.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: April 30, 2020

Residential Tenancy Branch