



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on December 8, 2019, by the landlord under the Residential Tenancy Act (the “Act”), for a monetary order for loss of rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for loss of rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on November 15, 2018 and was to expire on November 15, 2019. Rent in the amount of \$1,300.00 was payable on the first of each month. The tenants paid a security deposit of \$650.00. The tenancy ended on September 30, 2019.

The landlord testified that the tenants breached the fixed term tenancy when they gave notice to end the tenancy in a letter dated August 30, 2019 to end the tenancy on October 1, 2019. The landlord stated that they advertised the rental unit; however, they did not find a new tenant until November 1, 2019. The landlord seeks to recover loss of rent for October 2019.

The landlord testified that they seek compensation for the cost of sending the packages for the hearing.

The tenant testified that they did leave a month earlier than the expiry of their fixed term. The tenant stated that they gave the landlord their forwarding address on September 3, 2019 and the landlord did not return the damage deposit within 15 days.

The landlord argued that they did file an application for dispute resolution within 15 days of the tenancy ending. The landlord stated that the hearing was held on December 6, 2019 and their application was dismissed with leave to reapply. Filed in evidence is a copy of the decision. I have noted the file number on the covering page of this decision.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice (fixed term)

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,

...

I accept the evidence of both parties that the tenants ended the tenancy on September 30, 2019. I find the tenants have breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was November 15, 2019 as stated in the tenancy agreement.

Since the tenants failed to comply with the Act, I find the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy. As the landlord was unable to find a new renter for October 2019, I find the landlord is entitled to recover loss of rent in the amount of **\$1,300.00**.

In this case, the landlord seeks to recover the cost of sending the hearing packages; however, I find this is not a fee the landlord is entitled to recover as each party is responsible for their own cost relating to preparing and serving documents under the Act. Therefore, I decline to award any cost for service of their application.

I find that the landlord has established a total monetary claim of **\$1,400.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I accept the landlord filed an application for dispute resolution on October 16, 2019, which was heard on December 6, 2019. However, that application was dismissed because the landlord did not properly serve the tenants. The landlord was granted leave to reapply. When a party files an application for dispute resolution and it was not served in accordance with the Act, it has the same affect as it that application was never made.

In this case, the landlord filed their second application for dispute resolution, on December 8, 2019; however, the Arbitrator on December 6, 2019, did not extend the statutory time limits under the Act. I find the landlord has not complied with section 38 of the Act, as this application was not made within 15 days of the tenancy ending.

Under section 38(6) of the Act, if the landlord has not complied with section 38 of the Act, the tenants are entitled to the return of double the security deposit paid. Therefore, I find the value of the tenants' security deposit is doubled the original amount (\$650.00) for the total amount of \$1,300.00.

I order that the landlord retain the security deposit of **\$1,300.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$100.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: May 11, 2020

Residential Tenancy Branch