



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, MNRL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary award for losses from this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award for the return of his security deposit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on February 1, 2020 and ended on February 29, 2020. The tenant was obligated to pay \$985.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$492.00 security deposit which the landlord still holds. The landlord testified that the tenancy agreement was for a fixed term of three months that was to end on April 30, 2020. The landlord testified that the tenant did not provide her any written notice that he was moving out. The landlord disputes that she told the tenant to move out. The landlord testified that the tenant caused her to lose two months rent as she was unable to rent the unit due to COVID – 19 and therefore requests \$1970.00 in lost revenue and the recovery of the \$100.00 filing fee.

The tenant gave the following testimony. The tenant testified that the landlord let him move in on January 23, 2020 at a pro-rated amount but was not given any receipt for his cash payment nor was he given a copy of the tenancy agreement. The tenant testified that he requested those documents several times. The tenant testified that when it was time to pay the February rent, he requested a receipt again for his cash payment. The tenant testified that the landlord became angry and told him to move out at the end of the month, which he did. The tenant requests the return of his security deposit along with the recovery of the \$100.00 filing fee.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

I find that the landlord and tenant entered into a fixed term tenancy for the period from February 1, 2020 to April 30, 2020.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

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 above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If he does, he may have to pay for rental losses to the landlord. In this case, the tenant ended the tenancy on February 29, 2020, just one month after the tenancy began. In the tenant's own testimony, he acknowledged and conceded that he did not give written notice to move out. In addition, the tenant was unable to provide sufficient evidence to support his position that the landlord told him to move out. I find that the tenant breached the fixed term tenancy agreement. As such, the landlord is entitled to compensation for losses it incurred as a result of the tenant's failure to comply with the terms of her tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord was unable to mitigate losses for the month of March as the tenant did not advise her in writing that he was moving out or provide any type of notice. Therefore, I find that the landlord is entitled to the loss of rent for the month of March of \$985.00.

However, I find that the landlord has not attempted to fully minimize its losses under section 7(2) of the *Act* for the month of April. The landlord testified that due to COVID 19 she was unable to rent the unit. I accept that this is an unprecedented event, but the landlord did not provide sufficient evidence of what attempts, if any, were undertaken to rent the unit for April. As they have not provided sufficient evidence for April, I find that the landlord is not entitled to any compensation for that month.

The landlord is entitled to the recovery of the \$100.00 filing fee along with the \$985.00 loss of revenue for March 2020 for a total award of \$1085.00. As I have found that the

landlord is entitled to a monetary order and using the offsetting provision under Section 72 of the Act, I hereby apply the security deposit of \$492.00 to the amount leaving a balance owing to the landlord of \$593.00.

The tenant has not been successful in his application. The tenant's application is dismissed in its entirety without leave to reapply.

Conclusion

The landlord has established a claim for \$1085.00. I order that the landlord retain the \$492.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$593.00. 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 *Residential Tenancy Act*.

Dated: June 01, 2020

Residential Tenancy Branch