



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

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

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

The landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. This hearing was scheduled for 1:30 pm on this date. The hearing was paused until 1:35 pm to allow both parties to connect and participate. At 1:35 pm, the hearing commenced. The landlord stated that the tenant was served with the notice of hearing package via Canada Post Registered Mail on February 28, 2020 and has submitted a copy of the Canada Post Customer Receipt and the Tracking Label as confirmation. The landlord also stated that the tenant was served with the submitted documentary evidence via email approximately 1 week prior to the scheduled hearing date.

I accept the undisputed affirmed evidence of the landlord and find that the tenant was sufficiently served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. Although the tenant did not attend the hearing, I find that the tenant was deemed served as per section 90 of the Act.

During the hearing the landlord clarified that the monetary claim was to be lowered to \$3,462.50. As the claim is being lowered, I find that there is no prejudice to the tenant to continue.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation and recovery of the filing fee?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2019 on a fixed term tenancy ending on July 31, 2020. The monthly rent was \$1,150.00 payable on the last day of each month. A security deposit of \$575.00 was paid on July 3, 2019. A Condition Inspection Report for the Move-In was completed by both parties on August 1, 2019. A Condition Inspection Report for the Move-Out was completed by both parties on February 16, 2020. The landlord also provided written submissions which state that the landlord returned the \$575.00 security deposit "within a 2 week time."

The landlord seeks a clarified monetary claim of \$3,462.50 which consists of:

\$4,600.00	Loss of Rent, @\$1,150.00/month
	\$1,150.00 March 2020
	\$1,150.00 April 2020
	\$779.03 May 2020 (3 weeks, pro-rated)
\$100.00	Filing Fee

During the hearing the tenant's monetary claim was clarified as the landlord seeks loss of rent for May 2020 pro-rated at 3 weeks = 21 days. The landlord confirmed that the 31 days in May 2020 @ \$1,150.00 = $\$37.09 \times 21 = \779.03 and not the initial amount of \$862.50.

The landlord claims that the tenant broke the lease by moving out of the rental unit on February 16, 2020 with only prior verbal notice on February 14, 2020. The landlord stated that the tenancy agreement was for a fixed term until July 31, 2020. The landlord stated that she began advertising the rental unit on February 16, 2020 to be available for March 1, 2020. The landlord submitted photographs of email response(s) from an online ad for the rental unit. The landlord stated that despite advertising the landlord was not able to secure a new tenant until the third week of May 2020.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the undisputed affirmed testimony of the landlord that the tenant pre-maturely ended the tenancy by providing verbal notice on February 14, 2020 and vacated the rental unit on February 16, 2020. The landlord also provided undisputed evidence that the unit was immediately advertised for rent on February 16, 2020 for March 1, 2020 but was not successful in re-renting the unit until the third week of May 2020. On this basis, I find that the landlord has established a claim for loss of rent as clarified above for \$3,179.03.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted a monetary order for \$3,279.03.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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: July 02, 2020

Residential Tenancy Branch