



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL-S, FFL**

Introduction

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

- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:00 p.m. to enable the tenant to call into this hearing scheduled for 1:30 p.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords testified they served the tenant with the Notice of Dispute Resolution Proceedings package by registered mail on April 9, 2020 and provided a tracking number for the mailing. The tracking number is provided on the cover page of this decision. The landlords testified they sent it to the forwarding address provided by the tenant in a text message dated March 26, 2020. The landlords testified they tracked the registered mailing and advised me the package was received on April 14, 2020. I am satisfied the tenant was served with the Notice of Dispute Resolution Proceedings package on April 14, 2020, five days after it was mailed pursuant to sections 89 and 90 of the Act.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the tenant.

Issue(s) to be Decided

Is the landlord entitled to the compensation as sought?

Can the landlord recover the filing fee?

Background and Evidence

The landlords gave the following undisputed testimony. The landlord named on the tenancy agreement is the brother of SS, one of the landlords named in this application. The original landlord passed away and SS will be the eventual inheritor of the rental property, according to the landlords. The other landlord named on this application is the executor of the original landlord's estate. The landlords testified they are the proper parties to bring on this application.

The rental unit is the lower unit in a detached home comprising of an upper and lower unit. The month to month tenancy began on June 1, 2018 with rent set at \$900.00 per month payable on the first day of each month. A security deposit of \$450.00 and a pet damage deposit of \$200.00 was collected from the tenant at the commencement of the tenancy which the landlords continue to hold.

On March 1, 2020, the tenant paid his rent for that month, however on March 20th, he sent the landlord a text advising he would be ending the tenancy on March 31, 2020. Although the tenant left the unit with damage such as urine smells from the tenant's cat and general uncleanliness, the landlords are not claiming for these damages. The landlords seek only compensation from the tenant for ending the tenancy 'in the middle of the month' with less than a full month's notice.

Analysis

The parties signed the tenancy agreement stating the tenancy is 'month to month'. This is known as a 'periodic tenancy'.

Section 45(1) states a tenant may end a periodic 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, and
- b) 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 undisputed evidence of the landlords, I am satisfied the tenant ended the periodic tenancy by giving notice on March 20, 2020, effective March 31, 2020. Due to the fact that rent is payable on the first day of the month, the notice to end the tenancy provided by the tenant is non-compliant with section 45(1) of the Act. If the tenant

wanted to end the tenancy on March 31, 2020, the tenant must give notice to the landlord anytime before March 1st. As this did not happen, I find the tenant to be in breach of section 45 of the Act.

Section 7 of the Act states: If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. 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.

Residential Tenancy Branch Policy Guideline PG-3 [Claims for Rent and Damages for Loss of Rent] states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

The earliest time the tenant could have ended the tenancy on March 20th would have been April 30, 2020. As such, I find the landlords are entitled to rent for the month of April in the amount of \$900.00. The landlords are awarded a monetary order for \$900.00.

As the landlords' application was successful, the landlords are also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlords continue to hold the tenant's security deposit and pet damage deposit in the sum of \$650.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlords to retain the entire security deposit and pet damage deposit in partial satisfaction of the monetary claim.

Item	Amount
April rent	\$900.00
Filing fee	\$100.00
Less security deposit and pet deposit	(\$650.00)
Total	\$350.00

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$350.00**.

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: August 12, 2020

Residential Tenancy Branch