



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

The Landlord filed an application for dispute resolution (the “Application”) on September 16, 2020 seeking an order for compensation for monetary loss or other money owed. They apply to use the security deposit towards compensation on these two claims. Additionally, they seek to recover the filing fee for the Application.

The Landlord provided evidence showing their delivery of this dispute notice via Canada Post registered mail. A tracking report shows delivery on September 29, 2020. This is to an address previously provided by the Tenant. In the hearing, the Landlord provided that this package included the pages of prepared documentary evidence they planned to rely on for this hearing. Based on this evidence, I am satisfied the Landlord advised the Tenant of this hearing and provided their evidence in advance.

The Tenant did not attend the hearing and did not provided documentary evidence in advance. The hearing proceeded in the Tenant’s absence on January 8, 2021. The Landlord had the chance to present oral testimony and present evidence during the hearing. This practice is as set out in Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure*.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The Landlord gave testimony on the prospective tenancy. This was an arrangement they had with the Tenant in July 2020. They advertised the rental unit in July 2020, and one of the parties they considered as a prospective tenant was the Tenant. They decided the Tenant here was a suitable tenant and began the process of making an agreement.

The landlord provided a series of text messages they had with the Tenant from July 8 onwards. On that date, the Tenant stated their desire to start a tenancy at the rental unit. Also, on this date, the Landlord stated: "You are interested for 12 month lease" to which the Tenant answered: "Yes pls." By July 9, the Tenant sent a \$750 security deposit via email. The Landlord and Tenant arranged to meet on July 17.

On that date, the parties met. In the hearing, the Landlord described the meeting. The Tenant stated they lost their copy of the tenancy agreement. When signing another copy of the agreement, they objected to the term regarding provision of electricity. Additionally, they made a claim about the availability of phone service and then "started an argument and backed off."

A text message from the following day shows the Tenant asking: "Please let me know when you will be returning my \$750." On July 19, the landlord replied by saying "I don't have any renters now" and "I don't have any money to give you sorry." The Tenant objected to this, stating "There is no signed agreement." The Landlord asked for the Tenant's mail address to send a cheque for that amount via registered mail.

In the hearing, the Landlord provided that they had to advertise right away at the time in order to secure a different tenant for the month of August. They provided a copy of the online ad showing this date of availability, with "Lower Price to \$1,345."

The Landlord here claims for the difference in the reduced amount of rent from the rent amount they were going to have in place with the Tenant. This is the original amount of \$1,499, reduced to \$1,399, as stated on their Application. The difference is \$100 per month, for the total claimed amount of \$1,200.

Analysis

I refer to the *Act* in order to determine each party's rights and obligations in this dispute. The *Act* s. 1 gives pertinent definitions:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

"tenant" includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

A tenancy agreement confers rights and obligations, by s. 16:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

A tenant has ability to end a tenancy, as set out in s. 45. The subsection (4) provides that a notice must comply with s 52, which provides a notice to end tenancy must be in writing, and must be signed and dated, state the effective date, as well as state the grounds for ending the tenancy.

More broadly, to be successful in a claim for monetary compensation for loss the Landlord has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I note that for the purposes of this claim, the Landlord must provide sufficient evidence to establish any alleged loss stems from an existing tenancy

I find the evidence shows the Tenant paid a security deposit amount of \$750. The evidence for that is plain in the body of the text messages between the parties on July 9. Additionally, the Landlord asked, and the Tenant clarified that the agreement was for a 12-month fixed term. Also, the Landlord provided a copy of the agreement to the Tenant to sign earlier in July which

the Tenant then claimed was stolen. The Landlord had a replacement copy for the Tenant to sign when they met on July 17. There is no evidence contrary to the Landlord's account on these detailed points here.

With these factors in mind, I find there was a tenancy agreement in place between the parties. The *Act* provides that this can be an oral agreement, and the agreement can be implied. I find the parties had such an agreement, and the landlord-tenant relation was established. This is bolstered by the procurement of a security deposit and an established fixed twelve-month term.

With reference to s. 16, I find the agreement conferred rights and obligations. Along with this comes the duty to give a proper notice to end the tenancy. There is no evidence the Tenant gave proper notice to the Landlord within the timelines set by the *Act*. Because of this, the Landlord suffered a significant loss in having to scramble to find a replacement tenant, and I am satisfied that the only way they could accomplish this was by reducing rent. With regard to the four points set out above, I find from this that a loss to the Landlord exists, and it was from a violation of the *Act*.

From the hearing, I have the affirmed oral testimony of the Landlord describing how they went about obtaining a new tenant. They provided a copy of the online advertisement showing a reduced amount of rent. With regard to the four points set out above, I find they mitigated their loss both by obtaining a new tenant within a very short time frame and reducing the amount of rent.

I find the Landlord has established the amount of loss. They showed that the loss will continue through to the end of the current tenancy, at the reduced amount of \$100 per month. For a twelve-month tenancy, this brings their total claim to \$1,200.

Because I find the Landlord has satisfactorily established the four criteria listed above, I award the Landlord the amount of \$1,200 as recompense for their loss.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The Landlord has established a claim of \$1,200. After setting off the security deposit of \$750, there is a balance of \$450. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$450. This is an application of s. 72(2)(b) of the *Act*.

As the landlord is successful in this application for compensation, I find that the Landlord is entitled to recover the \$100 filing fee.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$550 for monetary loss. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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 *Act*.

Dated: January 12, 2021

Residential Tenancy Branch