



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 for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for a monetary loss or other money owed;
- authority to keep the tenant's security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord, the landlord's agent (agent), and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenant and recovery of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a month-to-month tenancy start date of July 1, 2021, monthly rent of \$1,050, due on the 1st day of the month, and a security deposit of \$525 being paid by the tenant to the landlord.

The landlord retained the tenant's security deposit, having made this claim against it.

The tenancy ended on or about October 2, 2021, when the tenant vacated the rental unit.

The landlord claimed the amount of \$525, comprised of half a month's loss of rent, due to the tenant's insufficient notice to end the tenancy.

In his application, the landlord wrote the following:

Tenant provided "Notice to Move" on September 10 2021 to vacate by end of September 2021 This was insufficient notice time as she should have provided her notice by August 31, 2021 As a result, i lost my October rent revenue because i did not have enough time to find someone to rent my basement suite. Tenant notified that she needed more time to vacate. She finally vacated on October 02, 2021

Filed into evidence with their application was a copy of the tenant's text message notice that she sent the landlord on September 10, 2021, informing the landlord she would be vacating the rental unit at the end of the month.

The agent submitted that they found new tenants, who moved into the rental unit on October 15, 2021, and therefore, they are seeking a half month's loss of rent, or October 1-14, 2021.

In response, the tenant said she told the landlord verbally on September 6, 2021, that she would vacate the rental unit at the end of the month, but agreed she did not move out until October 2, 2021.

The tenant asserted she should only be held accountable for the 2-3 days in October she was in the rental unit, and the landlord said to her that would be the case.

The tenant filed text message communication between the parties.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove each of the following:

1. That the other party violated the Act, Residential Tenancy Regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did whatever was reasonable to minimize the damage or losses that were incurred.

Under section 45(1) of the Act, a tenant may end a month to month tenancy by giving the landlord notice to end the tenancy effective on a date that is at least one clear calendar month before the next rent payment is due and is the day before the day of the month that rent is payable. In other words, in this case, if the tenant wanted to end the tenancy by September 30, 2021, the latest day the tenant could provide a signed, written notice to end the tenancy was August 31, 2021. Instead, the tenant sent the landlord a text message on September 10, 2021 of her intent to vacate on September 30, 2021.

Additionally, I find the tenant did not serve a signed, written notice by the approved methods under section 88 of the Act, when it was sent by text message.

By giving insufficient notice for September 30, 2021, the tenant is obligated under the Act to pay the monthly rent for October 2021, and she did not. Additionally, the tenant failed to vacate the rental unit until October 2, 2021, so it would not be feasible that the landlord could have new tenants into the rental unit on October 1, 2021, to mitigate their loss.

I therefore find the landlord submitted sufficient evidence that the tenant breached the Act by failing to give a proper written notice that she was vacating, and that the insufficient notice caused the landlord to suffer a loss of rent revenue for half of the following month of October 2021, as the landlord secured new tenants for October 15, 2021.

I find the landlord is entitled to a monetary award of \$525, as claimed.

As the landlord was successful, I grant the landlord recovery of their filing fee of \$100.

The landlord applied to keep the tenant's security deposit and I allow the landlord's request to retain the security deposit in partial satisfaction of their monetary award.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$100 under the following terms:

ITEM	AMOUNT
1. Loss of rent for October 1-14 2021	\$525
2. Filing fee	\$100
3. <i>Less tenants' security deposit</i>	-\$525
TOTAL MONETARY ORDER	\$100

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 *Residential Tenancy Act*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: May 05, 2022

Residential Tenancy Branch