



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to an application by the **Landlord** pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution, notice of hearing and evidence (the “Hearing Package”) by registered mail on May 19, 2022 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Hearing Package on May 25, 2022. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retention of the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy under written agreement started on October 31, 2021 and ended on April 26, 2022. Rent of \$700.00 was payable on the first day of each month. At the outset of

the tenancy the Landlord collected \$350.00 as a security deposit. The Landlord received the Tenant's forwarding address on April 26, 2022.

On April 23, 2022 the Tenant gave the Landlord verbal notice to end the tenancy for April 26, 2022. The Landlord immediately advertised the unit for rent online and on a community notice board. The Landlord sought the same amount of rent as was being paid by the Tenant. The Landlord claims \$700.00 for unpaid May 2022 rent.

Analysis

Section 45(1) of the Act provides that 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.

Section 53(1) of the Act provides that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with the above section, the notice is deemed to be changed to be in accordance with the above section. Based on the Landlord's undisputed evidence I find that the Tenant did not provide the required month notice and that the Tenant's notice to end for April 26, 2022 deemed to be corrected to an end of tenancy date of May 31, 2022.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage

or loss. It is undisputed that no rent was paid for May 2022. For this reason and based on the Landlord's undisputed evidence of immediately advertising the unit at the same rental rate, I find that the Landlord took reasonable steps to mitigate the losses claimed and is therefore entitled to the claimed amount of **\$700.00**.

As the Landlord's claim has been successful, I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$800.00**. Deducting the security deposit of **\$350.00** plus zero interest leaves **\$450.00** owed to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$350.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$450.00**. If necessary, 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 Act.

Dated: January 19, 2023

Residential Tenancy Branch