



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCL-S, FFL**

Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- for a monetary order for damages pursuant to section 67 of the Act
- for reimbursement of the filing fee pursuant to section 72 of the Act

Landlord CN appeared. The tenant did not appear. The landlord was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The landlord was reminded to not record the hearing pursuant to Rule of Procedure 6.11. The landlord was affirmed.

The landlord testified that he served the dispute notice and materials by email. He stated that the tenant sent the landlord an email on September 6, 2022, requesting that the landlord communicate by email. The landlord provided the email as evidence of the tenant’s request, along with the dispute notice and evidence package served on the tenant on September 29, 2022. Based on the testimony of the landlord I find the tenant duly served in accordance with sections 88 and 89 of the Act and section 43 of the Residential Tenancy Regulations.

Issue(s) to be Decided

1. Is the landlord entitled to compensation for damage or loss? If so, is the landlord entitled to retain the security deposit?
2. Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced June 18, 2022, for a fixed term until June 30, 2023. Rent was \$2,250.00 per month due on the first of the month. The landlord holds a security deposit of \$1,125.00 in trust for the tenant. On July 31, 2022, the tenant gave the landlord notice to end the tenancy as of August 31, 2022.

The landlord stated that he is the co-owner of the rental property with his family. Once the tenant ended the tenancy it became necessary for the landlord to travel to the rental unit for the purpose of inspecting the property and finding new tenants. His family was living in Calgary, AB. The landlord was living in Vancouver, BC. It was closer and therefore less expensive for his family to travel to the rental unit from Calgary. The expenses claimed by the landlord are as follows:

- Fuel - \$99.00
- Meals - \$73.08
- Accommodations - \$236.64
- Labour - \$150.00

The landlord further explained the labour cost as the cost for his family to complete a move out inspection, and to advertise, find, and interview new tenants. The amount was calculated using BC's Minimum Wage Guidelines of \$15.65 per hour.

The landlord testified that he did not lose any rent due to the tenant ending the tenancy early and was able to secure new tenants for September 1, 2022.

Upon questioning, the landlord explained that these costs were built into the rent over the year lease term. The landlord expected to receive \$27,000.00 in revenue from the tenant over the term of the lease, but only received \$5,600.00 in rent payments from the tenant prior to ending the tenancy. Therefore, these are costs incurred directly from the tenant ending the fixed term tenancy early.

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. As noted in Policy Guideline #16, 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, the onus is on the landlord to prove their entitlement to a claim for a monetary award.

RTB Policy Guideline 30 states in part:

During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties, or under section F below (Early Termination for Family or Household Violence or Long-Term Care)

It is undisputed and I find that the tenant ended the tenancy prior to the end of the fixed term in the lease in contravention of the Act. It is undisputed that the parties did not agree to mutually end the tenancy. However, I find that the landlord has not satisfied his onus to establish that all the claims for damage were incurred as a direct result of the tenant ending the tenancy early. I do accept the landlord's contention that he did incur some loss due to the early end of the tenancy, but I find the loss is difficult to quantify given the landlord's explanation of how their business costs were calculated into the rent. It is reasonable to infer that at least some of the same costs would have been calculated into the rent that the new tenants who subsequently took possession of the rental unit were paying.

RTB Policy Guideline 16 states in part:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I have found that the tenant acted in contravention of the Act. I find as well that the landlord suffered some inconvenience as a result of the tenant's actions. I also take

into consideration that the landlord's inconvenience stems directly from their significant efforts to minimize their loss as required. RTB Policy Guideline states in part:

A landlord or tenant claiming compensation for damages or loss has a legal obligation to do whatever is reasonable to minimize the damage or loss.

The landlord's application for compensation is granted and I find that the landlord is entitled to nominal damages in the amount of \$300.00. As the landlord was successful in his application, he is entitled to recover the filing fee of \$100.00.

Conclusion

The landlord's application is granted. The landlord is entitled to compensation in the amount of \$400.00 for loss and for the filing fee. The landlord is permitted to retain \$400.00 from the tenant's security deposit as compensation.

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: June 08, 2023

Residential Tenancy Branch