



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding MAPLE LEAF PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on December 5, 2022. The Landlord applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- a monetary order for compensation for monetary loss or other money owed;
- an order permitting the Landlord to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by GR, an agent. The Tenants were represented at the hearing by WW. Both GR and WW provided affirmed testimony.

On behalf of the Landlord, GR testified that the Notice of Dispute Resolution Proceeding package was served on the Tenants by registered mail. The Tenant acknowledged receipt. No issue regarding service or receipt of these documents was raised during the hearing. Pursuant to section 71 of the Act, I find these documents were sufficiently served for the purposes of the Act.

On behalf of the Tenants, WW confirmed that the documentary evidence submitted to the Residential Tenancy Branch Dispute Management System was not served on the Landlord. Accordingly, it has been excluded from consideration.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for compensation for monetary loss or other money owed?
2. Is the Landlord entitled to an order permitting the Landlord to retain the security deposit?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the fixed term tenancy began on June 27, 2022, and was expected to continue to June 30, 2023. However, the parties agreed the Tenants vacated the rental unit on or about November 22, 2022, before the end of the fixed term. At all material times, rent of \$2,050.00 per month was due on the first day of each month. The Tenants paid a security deposit of \$1,025.00, which the Landlord holds. A copy of the tenancy agreement was submitted into evidence.

The Landlord claims \$1,025.00 for unpaid rent. GR and WW agreed that the Tenants gave notice to end the tenancy on October 28, 2022, and that the Tenants provided the Landlord with an affidavit on November 4, 2022. A copy of the affidavit was submitted into evidence. GR confirmed the Landlord was able to re-rent the unit effective December 16, 2022. A copy of the new tenancy agreement, signed on December 2, 2022, was submitted into evidence. However, GR testified that rent of \$1,025.00 remains outstanding for the period from December 1-15, 2022.

In reply, WW acknowledged that rent was not paid for the period from December 1-15, 2022. However, WW testified that the Tenants gave notice on October 28, 2022, and followed up by providing the requested affidavit on November 4, 2022. WW also testified that the Tenants did everything they could to help the Landlord re-rent the unit. Specifically, WW testified that, with the approval of GR, the Tenants posted an advertisement on Craigslist. WW testified that the Tenants conducted an open house on October 29 and 30, 2022, and forwarded the names of potential tenants to the Landlord on November 1, 2022. According to WW, GR did not respond right away because he was on vacation.

In response, GR acknowledged he agreed the Tenants could post an advertisement and forward names to Landlord. However, GR testified that the company had an issue with the Tenants' use of internal forms. GR also testified that the Landlord has a process to go through when vetting new tenants – credit and reference checks – but that is the leasing agent's job.

The Landlord claims \$100.00 in recovery of the filing fee paid to make the application and requests that the security deposit held be applied in partial satisfaction of the claim.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Landlord claimed \$1,025.00 for unpaid rent. Section 45 of the Act confirms that a tenant may end a fixed-term tenancy by giving a notice to end the tenancy on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. In this case, I find the end of the fixed term tenancy was expected to be June 30, 2023. However, contrary to the terms of the fixed term tenancy agreement, the Tenants gave written notice on October 28, 2022, and vacated the rental unit on November 22, 2022.

The Landlord claims \$1,025.00 for unpaid rent for the period from December 1-15, 2022. However, section 7(2) of the Act confirms that a party making a claim must do whatever is reasonable to minimize the damage or loss. In this case, WW provided oral testimony of steps taken by the Tenants to assist the Landlord. Specifically, the Tenants posted an on-line advertisement, conducted an open house, and forwarded the names of potential tenants to the Landlord as early as November 1, 2022. However, GR did not provide oral testimony or refer me to documentary evidence in support of steps taken by the *Landlord* to minimize losses. Rather, GR testified to his belief that there was follow-up, but that any vetting of potential tenants is the job of the leasing agent. As a result, I find there is insufficient evidence before me to conclude the Landlord took reasonable steps to minimize losses. Therefore, I find that the Landlord's application is dismissed with leave to reapply.

Policy Guideline #17 confirms that when a landlord applies to retain a security deposit, but the claim is dismissed, the tenant is entitled to the return of the security deposit whether or not the tenant has applied for dispute resolution for its return. As the Landlord's application has been dismissed, I order the Landlord to return the security deposit to the Tenants forthwith. In support, I grant the Tenants a monetary order in the amount of \$1,025.00.

Conclusion

The Landlord's application is dismissed without leave to reapply.

Pursuant to Policy Guideline #17, the Tenants are granted a monetary order in the amount of \$1,025.00. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: September 8, 2023

Residential Tenancy Branch