

## **DECISION**

### **Introduction**

This hearing dealt with the Landlord's Application for Dispute Resolution filed under on October 25, 2024, under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

This hearing dealt with the Tenants' Application for Dispute Resolution filed under on November 13, 2024, under the *Residential Tenancy Act* (the Act) for:

- for the return of the security deposit
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Both parties appeared and are noted on the covering page of this Decision

### **Issues to be Decided**

Are the Landlords entitled to a monetary for money owed or compensation for damage or loss under the Act?

Are the Landlords entitled to retain all or a portion of the Tenant's security deposit or should the security deposit be returned to the Tenants?

Should the filing fee be granted to either party?

## Background and Evidence

The parties entered a fixed term tenancy on September 18, 2024, which was to begin on November 1, 2024, and was to expire on October 31, 2025. Rent in the amount of \$3,150.00 was payable on the first of each month. A security deposit of \$1,575.00 was paid by the Tenants. The Tenants did not move into the rental unit.

The Landlord stated that on September 25, 2024, the Tenants gave them notice that they would not be moving into the rental. The Landlord stated that they were away on holidays and not back to Canada until October 7, 2024; however, they had reached out to other applicant that they had interviewed and suitable when they had chosen the Tenants to rent the premises, and they were unavailable. The Landlord stated that the original advertisements, except for the Facebook advertisement had not been removed as they did not have time to remove them before they left the country. The Landlord stated by October 16, 2024, they had found a new renter, and their tenancy commenced on November 15, 2024, as they had to give notice to end their tenancy. The Landlord seeks to recover loss of rent for half of November 2024, in the amount of \$1,575.00.

The Tenants confirmed that they gave the Landlord notice on September 25, 2024, that they would not be moving into the premises on November 1, 2024. The Tenants stated that they believe the Landlord did not mitigate the loss as they believe the Landlord did not make a second attempt as all communication was based on the original advertisement. Further, the Landlord requested a higher rent from the new renter.

The Landlord argued that they did what was reasonable to mitigate the loss as they Tenants gave notice that they were not moving into the premises on September 25, 2024, and they found a new renter on October 16, 2024, and their tenancy started on November 15, 2024. The Landlord that they did not advertise the rental unit at a higher rate; however, they agreed to reduce the Tenants rent by \$50.00 when the entered into the tenancy agreement.

## **Analysis**

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 16 of the Act states 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.

Section 45 of the Residential Tenancy Act states: (fixed term)

*45 (2) A tenant may end a fixed term 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,*

*(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

*(c) is the day before the day in the month, or in the other period on which the tenancy is based,*

In this case, the Tenants entered into a fixed term agreement on September 18, 2024. I find the Tenants obligation under the tenancy agreement took effect on that date. The Tenant gave notice to the Landlord on September 25, 2024, that they would not be moving into the rental unit. I find the Tenants breached section 45(2) of the Act as they were not entitled to end the tenancy earlier than the date specified in the tenancy agreement, which was October 31, 2025.

The Landlord rented the rental unit within 16 days of the Landlord receiving the Tenants notice. The Landlord had reached out to other potential renters, who had already viewed the rental unit and where already found to be suitable, which I find is appropriate; however, they did not enter into a tenancy agreement for the rental unit. The Landlord had to show the rental unit, and ensure the new renter was suitable. The Landlord is only required to take reasonable steps to mitigate the loss. I find the Landlord made reasonable attempts to mitigate the loss as they had found a new renter within 16 days. Therefore, I find the Tenants owe the loss of rent to the Landlord in the amount of **\$1,575.00**.

I find that the Landlords have established a total monetary claim of **\$1,675.00** comprised of loss of rent, and the \$100.00 fee paid for this application.

I order that the Landlords to retain the security deposit of **\$1,575.00** in partial satisfaction of the claim. I grant the Landlords an order under section 67 for the balance due of **\$100.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Tenant's gave the Landlord their forwarding address on October 24, 2024. The Landlord claimed against the Tenants' security deposit on October 25, 2024, as required by the Act. As I have granted the Landlords authority to keep the Tenants security deposit. I find I must dismiss the Tenants application for the return of their security deposit. I find the Tenants are not entitled to recover the filing fee.

## **Conclusion**

The Landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the Landlords are granted a formal order for the balance due.

The Tenants' application is dismissed without leave to reapply.

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 13, 2025

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Residential Tenancy Branch