



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL MNSD FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for compensation for damage or loss pursuant to section 67.

The tenants requested:

- authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

MU appeared for the tenants in this application. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with each other’s Applications and evidence.

Preliminary Issue-Tenant’s Forwarding Address

This month-to-month tenancy began on November 29, 2016 and ended on May 31, 2017. Monthly rent was set at \$1,195.00. The landlord had collected a security deposit and pet damage deposit in the amount of \$597.50 for each deposit at the beginning of the tenancy, and returned \$995.00 to the tenants at the end of the tenancy. The landlord still holds the remaining \$200.00.

The tenant MU testified that he had provided the landlord with a forwarding address by way of mail on June 13, 2017. The landlord disputes having received the tenants' forwarding address, and the tenant was unable to provide confirmation or proof of service for the provision of his forwarding address to the landlord.

Section 38 (1) of the *Act* states that within 15 days of the latter of receiving the tenant's forwarding address in writing, and the date the tenant moves out, the landlord must either return the tenant's security deposit, or make an application for dispute resolution against that deposit.

RTB Policy Guideline 17, paragraph 10 establishes the following:

The landlord has fifteen days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit plus interest to the tenant.

The tenants had applied for the return of the remaining portion of their security and pet damage deposits, but the tenants were unable to provide supporting evidence to demonstrate that the landlord was provided with their forwarding address in writing. The landlord disputes having received the forwarding address. Accordingly, the tenants' application is dismissed with leave to reapply.

As both parties were present in the hearing, the tenants' forwarding address was confirmed during the hearing, as noted on the cover page of this decision. I indicated to both parties that today's date, December 28, 2017, serves as the date that the landlord was served with the tenants' forwarding address, and that that the deposits must be dealt with in accordance with section 38 of the *Act*.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of the tenants' case, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this filing fee.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and losses?

Background and Evidence

This month-to-month tenancy began on November 29, 2016 and ended on May 31, 2017. Monthly rent was set at \$1,195.00.

The landlord provided undisputed testimony in this hearing that this tenancy ended on May 31, 2017 despite the tenants' failure to provide written notice to the landlord in accordance with the *Act* and tenancy agreement.

The landlord is seeking 1 month's rent as compensation for the failure of the tenants to comply with section 45(1) of the *Act*. The landlord testified in the hearing that he was able to re-rent the unit on June 1, 2017, at \$1,295.00 per month.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 45(1) deals with a Tenant's notice in the case of a periodic tenancy:

45 (1) 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.

The landlord provided undisputed evidence at this hearing that the tenants did not give one month notice to end this tenancy as required by section 45(1)(a) of the *Act*. Although I am satisfied that the landlord had made efforts to mitigate the tenants' exposure to the landlord's monetary loss of rent for June 2017, as is required by section 7(2) of the *Act*, I find that the landlord did not provide sufficient evidence to support that they had suffered a financial loss due to the tenants' failure to comply with section 45(1)(a) of the *Act*. In fact, I find that the landlord was able to re-rent the unit immediately, at a higher rate of monthly rent. I, therefore, dismiss the landlord's monetary claim for one months' rent.

Conclusion

The tenants' application for monetary application is dismissed with leave to reapply. The tenants' application to recover the filing fee for this application is dismissed without leave to reapply.

The landlord's 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 *Residential Tenancy Act*.

Dated: December 28, 2017

Residential Tenancy Branch