



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- and a monetary order for money owed or compensation for loss or money owed under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord's agent MM attended the hearing by way of conference call, the tenants did not. I waited until 1:40 p.m. to enable the tenants to participate in this scheduled hearing for 1:30 p.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agent testified that the tenants were served with the landlord's application for dispute resolution hearing package on by way of registered mail on March 21, 2018 to the forwarding address provided by the tenants when they moved out. The landlord provided Canada Post tracking numbers in the hearing. In accordance with sections 89 and 90 of the Act, I find that the tenants were deemed served with the landlord's application and evidence on March 26, 2018, five days after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for losses and money owed?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord MM testified regarding the following facts. This fixed-term tenancy began on July 1, 2017 and was to end on June 30, 2018. Monthly rent was set at \$2,160.00, payable on the first

of the month. A security deposit in the amount of \$1,080.00 was paid by the tenants at the beginning of the tenancy, which the landlord still holds.

The landlord testified that the tenants moved out before the end of the fixed term tenancy, on February 28, 2018. The landlord advertised the unit immediately and was able to re-rent the unit for April 1, 2018. The landlord is also seeking a monetary order for the NSF fee and unpaid February 2018 Rent as the tenants' cheque came back as Non-Sufficient funds.

The landlord is seeking a monetary order as set out in the table below:

Item	Amount
Loss of Rental Income for March 2018	\$2,160.00
Bounced Rent Cheque for February 2018	2,160.00
NSF Fee	32.00
Total Monetary Order Requested	\$4,352.00

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

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, that rent is payable under the tenancy agreement.

The landlord provided undisputed evidence at this hearing that the tenants had moved out before the end of this fixed-term tenancy. I find that the tenants had moved out prior to the end of this fixed term tenancy, in a manner that does not comply with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to this tenancy. The tenants moved 4 months earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. The evidence of the landlord is that they were able to re-rent the suite, and a monetary order for the loss of rental income for the month of March 2018. I am satisfied that the landlord had made an effort to mitigate the tenants' exposure to the landlord's monetary loss of rent for the remainder of the tenancy, as is required by section 7(2) of the *Act*. I, therefore, allow the landlord's monetary order for \$2,160.00 in lost rental income.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I find that the tenants were obligated to pay the rent as per the tenancy agreement and the *Act*. I find the landlord provided undisputed evidence to support that the tenants have not paid the outstanding rent for February 2018, nor did they have an order from an Arbitrator allowing them to deduct all or a portion of the rent, nor do I find that the tenants had a right under the *Act* to deduct or withhold all or portion of the rent.

Accordingly I find that the landlord is entitled to \$2,160.0 in unpaid rent, and \$32.00 for the NSF fee.

As the landlords were successful in their application, I am allowing the landlord to recover the filing fee from the tenants

The landlord continues to hold the tenants' security deposit of \$1,080.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$3,372.00 the landlord's favour, which allows for the landlord to retain the tenants' security deposit in partial satisfaction of their monetary claim.

Item	Amount
Loss of Rental Income for March 2018	\$2,160.00
Bounced Rent Cheque for February 2018	2,160.00
NSF Fee	32.00
Filing Fee	100.00
Less Security Deposit	-1,080.00
Total Monetary Order	\$3,372.00

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: October 10, 2018

Residential Tenancy Branch