



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to 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 pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 p.m.

The landlord's agent (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rules 7.1 and 7.3 of the Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord testified that their Application for Dispute Resolution (the Application) was sent to the tenant by way of Registered Mail on May 09, 2018. The landlord provided the Canada Post tracking number to confirm this registered mailing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant is deemed served with the Application on May 14, 2018, five days after its registered mailing.

The landlord testified that their evidence was sent to the tenant by way of Registered Mail on October 27, 2018. The landlord provided the Canada Post tracking number to

confirm this registered mailing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed served with the evidence on November 01, 2018, five days after its registered mailing.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure (the Rules) states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that the landlord did not serve the tenant with their evidence in accordance to the Rules; however, I find that the evidence provided are documents either previously signed by the tenant or correspondence between the landlord and the tenant. I find that that the tenant is not prejudiced by documents that they have previously signed or which they have written and for this reason I will consider the landlord's evidence.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the landlord entitled to retain all or a portion of the tenant's security deposit?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

Written evidence was provided by the landlord showing that this tenancy began on October 01, 2017, with a monthly rent in the amount of \$1,550.00, due on the first day of each month with a security deposit in the amount of \$775.00 that the landlord currently retains.

The landlord also provided in evidence:

- A copy of a notice to vacate the rental unit from the tenant dated April 11, 2018, with an effective date of April 30, 2018;
- A copy of a move-out condition inspection report initialled by the tenant; and
- A copy of an e-mail exchange between the landlord and the tenant regarding the notice to vacate and the return of the security deposit.

The landlord gave undisputed affirmed testimony that this tenancy ended when the tenant gave notice in April 2018 that they were going to move out of the rental unit for at the end of that same month. The landlord stated that they were seeking to keep the security deposit in the amount of \$775.00 to cover the expenses for finding a new tenant for May 2018.

Analysis

Pursuant to section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 45 of the Act establishes that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Having reviewed the evidence and affirmed testimony, I find that the tenant gave a notice to end their tenancy that is not in compliance with section 45 of the Act. I find that the legal effective date for a notice to end tenancy provided in April 2018, for rent that is due on the first of the month, is May 31, 2018. I accept that the landlord incurred a loss due to expenses incurred to rent out the rental unit for May 2018. I accept the landlord's testimony that they mitigated their loss and found a new occupant for the rental unit for May 2018.

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. Based on the landlord's evidence and undisputed testimony, I find that the landlord is entitled to a monetary award in the amount of \$775.00, the amount claimed by the landlord, for unpaid rent owing for May 2018.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in their application, they may recover the filing fee related to this application.

Conclusion

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to retain the tenants' security deposit and to recover the filing fee for this Application:

Item	Amount
Unpaid May 2018 Rent	\$775.00
Less the Security Deposit	-775.00
Filing Fee for this application	100.00
Total Monetary Order	\$100.00

The landlord is provided with a Monetary Order in the above terms and the tenant(s) must be served with 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: November 22, 2018

Residential Tenancy Branch