



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NYSTAR DEVELOPMENTS CORP LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 10, 2019 (the "Application"). The Landlord sought compensation for monetary loss or other money owed, to keep the security deposit and reimbursement for the filing fee.

The Agent appeared at the hearing for the Landlord. The Agent called a witness at the hearing. The witness was outside of the room until required. The Tenant did not appear at the hearing. I explained the hearing process to the Agent who did not have questions when asked. The Agent and witness provided affirmed testimony.

The Agent provided the correct Landlord name which is reflected in the style of cause.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence.

The Agent testified that the hearing package was sent by registered mail. The Landlord submitted the customer receipt for this with Tracking Number 1 on it. I looked this up on the Canada Post website which shows it was delivered and signed for by the Tenant July 16, 2019.

The Agent testified that the Landlord's evidence was sent by registered mail. The Landlord submitted the customer receipt for this with Tracking Number 2 on it. I looked this up on the Canada Post website which shows it was delivered and signed for by the Tenant September 06, 2019.

Based on the undisputed testimony of the Agent, customer receipts and Canada Post website information, I find the Tenant was served in accordance with sections 88(d) and

89(1)(d) of the *Residential Tenancy Act* (the “Act”). Based on the Canada Post website information, I find the Tenant received the hearing package July 16, 2019 and Landlord's evidence September 06, 2019. I find the hearing package and Landlord's evidence was served in sufficient time for the Tenant to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to keep the security deposit?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought \$448.50 as liquidated damages for the Tenant breaking the lease.

A written tenancy agreement was submitted as evidence. The tenancy started December 01, 2018 and was for a fixed term ending August 31, 2019. Rent was \$1,495.00 per month due by the first day of each month. The Tenant paid a \$747.50 security deposit. The agreement is signed by the Tenant and for the Landlord.

The agreement includes a liquidated damages clause stating the Tenant will pay the Landlord \$500.00 if the Tenant gives the Landlord notice before the end of the fixed term.

The Agent testified as follows.

The parties did a move-in inspection November 03, 2018.

The Tenant signed a lease ending August 31, 2019. The Tenant broke the lease. The Tenant gave notice June 03, 2019 to end the tenancy June 30, 2019. The Tenant vacated the rental unit by June 30, 2019. The Tenant breached the fixed term tenancy.

The parties did a move-out inspection June 30, 2019.

The Tenant provided her forwarding address by email June 30, 2019. This is in evidence.

The Landlord returned \$199.00 of the security deposit to the Tenant July 11, 2019. The Landlord submitted a photo of a cheque showing this.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. The Tenant did not agree in writing at the end of the tenancy that the Landlord could keep some or all of the security deposit.

He had to hire J.L., a leasing agent, to re-lease the unit. The invoice for this has been submitted. J.L. has been leasing units for him for a few years. The \$448.50 charge was negotiated between him and J.L. Others charge more for leasing units. The amount requested is less than the liquidated damages amount noted in the tenancy agreement.

J.L. testified as follows. She is a leasing agent. Re-leasing the unit included placing advertisements, answering calls, sending photos, showing the unit, reviewing applications, signing the lease and ensuring the Landlord got the deposits.

The Landlord submitted an email from J.L. to the Tenant dated June 04, 2019 about getting photos of the unit for an advertisement and showing the unit.

The Landlord submitted an email from the Tenant dated June 03, 2019 giving notice for June 30, 2019.

The Landlord submitted the invoice from J.L. showing the \$448.50 charge.

Analysis

Section 7(1) of the *Act* states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 45 of the *Act* outlines when a tenant can end a tenancy and states:

(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 [emphasis added]

(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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Section 38 of the *Act* sets out a landlord's obligations in relation to a security deposit held at the end of a tenancy. Sections 24 and 36 of the *Act* outline extinguishment in relation to security deposits.

Based on the undisputed testimony of the Agent in relation to the move-in and move-out inspections, I find the Tenant did not extinguish their rights to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlord extinguished their rights to the security deposit under sections 24 or 36 of the *Act* as extinguishment relates to claims for damage to the rental unit which is not the basis for this claim.

Based on the undisputed testimony of the Agent and emails from the Tenant dated June 03, 2019 and June 30, 2019, I find the tenancy ended June 30, 2019 for the purposes of section 38(1) of the *Act*.

Based on the undisputed testimony of the Agent and email from the Tenant dated June 30, 2019, I find the Tenant provided the Landlord a forwarding address June 30, 2019.

The Landlord had 15 days from June 30, 2019 to repay the security deposit in full or claim against the security deposit. The Landlord filed the Application July 10, 2019, within the time limit for doing so. The Landlord complied with section 38 of the *Act*.

Based on the written tenancy agreement, I find the Tenant entered into a fixed term tenancy with the Landlord which ended August 31, 2019.

Based on the undisputed testimony of the Agent and emails from the Tenant dated June 03, 2019 and June 30, 2019, I find the Tenant ended the tenancy June 30, 2019. This was prior to the end of the fixed term. There is no evidence suggesting section 45(3) of the *Act* applies. The Tenant's email dated June 03, 2019 seems to indicate the Tenant ended the fixed term early because they were laid off and could not pay rent.

I find the Tenant breached section 45(2) of the *Act* and the tenancy agreement.

Based on the undisputed testimony of the Agent, testimony of J.L. and invoice for J.L.'s services, I accept that the Landlord had to hire J.L. to re-rent the unit earlier than he otherwise would have.

Based on the undisputed testimony of the Agent, testimony of J.L. and invoice for J.L.'s services, I accept that hiring J.L. cost the Landlord \$448.50. I accept the testimony of J.L. about what this cost covers. I find the amount reasonable considering what it covers. I also find it reasonable considering the rent amount and considering that the liquidated damages amount in the tenancy agreement is higher than what the Landlord is seeking.

The Landlord is entitled to the \$448.50 sought.

Given the Landlord was successful, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$548.50. Based on the undisputed testimony of the Agent and photo of the cheque submitted, I accept that the Landlord only holds \$548.50 of the security deposit. The Landlord can keep the remainder of the security deposit pursuant to section 72(2) of the *Act*.

Conclusion

The Landlord is entitled to compensation in the amount of \$548.50. The Landlord can keep the remainder of the security deposit which the Landlord currently holds.

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: November 04, 2019

Residential Tenancy Branch