



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 in partial satisfaction of the monetary order requested 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 left the teleconference hearing connection open until 1:47 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. 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. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord gave sworn testimony that they sent the tenant a copy of their dispute resolution hearing package and written evidence by registered mail on August 2, 2019. The landlord said that this package was sent to the tenant at the address provided by the tenant at the end of this tenancy. The landlord gave sworn testimony that this package was returned to the tenant by Canada Post as unclaimed. The landlord also provided the Canada Post Online Tracking Number to confirm this registered mailing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with this package on August 7, 2019, the fifth day after its registered mailing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

On April 20, 2019, the parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) for a tenancy that was scheduled to run from May 1, 2019 until April 30, 2020. Monthly rent was set at \$1,350.00, payable in advance by the first of each month. The landlord continues to hold the tenant's \$675.00 security deposit paid when this tenancy began.

On June 2, 2019, the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door, seeking payment of \$1,350.00 that was owing as of that date for rent for June 2019. Although the tenant paid \$700.00 of this amount on June 7, 2019, the tenant did not pay the remaining \$650.00.

The landlord subsequently applied for an Order of Possession and a monetary award for unpaid rent then owing plus the recovery of their filing fee for that application using the Residential Tenancy Branch's (the RTB's) direct request process. In their June 27, 2019, an Adjudicator appointed pursuant to the *Act* issued a decision ending this tenancy, and allowing the landlord a 2 Day Order of Possession and a monetary Order of \$650.00 for the rent that was owing as of June 24, 2019 (see above noted file reference).

The landlord's current application sought a monetary award of \$1,350.00 for losses incurred by the landlord for the month of August 2019, because the tenant did not vacate the rental unit on July 31, 2019, overholding the rental unit until August 1, 2019. The landlord maintained that the tenant did not allow the landlord to show the premises to prospective new tenants during the latter stages of their occupancy in the rental unit, and the state of the rental unit was such that there was no possibility of the rental unit being available for rental as of August 1, 2019.

The landlord testified that after gaining possession of the premises on August 1, 2019, they began showing the premises to prospective tenants when they returned from

vacation in the third week of August 2019. They said that they were successful in locating a new tenant for the premises, who took possession of the rental unit as of September 1, 2019.

Analysis

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant contravened the *Act* or their tenancy agreement, and that the tenant is responsible for losses that the landlord incurred as a result of that contravention.

Section 57 of the *Act* outlines what happens when a tenant overholds a tenancy beyond the end of the tenancy. Section 57 defines an overholding tenant as "a tenant who continues to occupy a rental unit after the tenant's tenancy is ended." Section 57(2) and (3) of the *Act* read as follows:

(2) The landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In this case, the tenant did overhold the rental unit by remaining in possession of the rental unit until the evening of August 1, 2019. While this would normally only entitle the landlord to a monetary award for the first day of August 2019, I find on a balance of probabilities that the landlord has provided sufficient undisputed sworn testimony and written evidence to be satisfied that the tenant's lack of co-operation in the final stages of this tenancy made it difficult for the landlord to locate a tenant who would take possession of the rental unit for August 2019.

Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damage or loss that results from that failure to comply. Section 7(2) of the *Act* also places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

While I accept that the tenant's actions prior to surrendering possession of the rental unit to the landlord on August 1, 2019 prevented the landlord from finding a new tenant, the landlord did not commence attempting to re-rent this rental unit until the landlord returned from vacation in the third week of August 2019. Renting accommodations to tenants requires a landlord to operate the property as a business. Under these circumstances, the landlord provided no evidence that they had retained someone else to commence attempting to re-rent the premises and show the rental unit to prospective tenants while the landlord was on vacation for the first two weeks of August. By waiting until the third week of August after obtaining possession of the premises on August 1, 2019, I find that the landlord has not fully mitigated the tenant's exposure to the landlord's loss of revenue for the month of August 2019. Some of the time in early August 2019 may have been required to clean up the rental unit after the tenant's departure and prepare the premises for showings.

Based on a balance of probabilities, I find that the landlord is entitled to the recovery of one-half month's rent for the month of August 2019, a total of \$675.00. This award compensates the landlord for a mix of the tenant's overholding of the premises for one day in August, the tenant's failure to provide access to the rental unit prior to their departure so as to allow the landlord to properly mitigate the tenant's exposure to the landlord's loss of rent for this fixed term tenancy, and the failure of the tenant to keep the rental unit in condition such that it could be rented to someone else without first cleaning and repairing damage arising out of this tenancy. This award also recognizes that the landlord delayed attempting to re-rent the premises for a two week period after having gained possession of the premises.

I allow the landlord to retain the security deposit for this tenancy to compensate the landlord for the monetary award for losses arising out of this tenancy.

As the landlord has been successful in this application, I allow the landlord to recover their \$100.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's under the following terms, which enables the landlord to recover losses arising out of this tenancy for the month of August 2019, and to recover their filing fee for this application, and to retain the tenant's security deposit in partial satisfaction of this award:

Item	Amount
Landlord's Entitlement to Losses Arising out of this Tenancy for August 2019 (\$1,375.00 x 50% = \$675.00)	\$675.00
Less Security Deposit	-675.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$100.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 19, 2019

Residential Tenancy Branch