



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

The landlord provided affirmed testimony that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on August 13, 2019 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on August 18, 2019.

The landlord provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution on August 18, 2019.

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord provided uncontradicted affirmed testimony as the tenant did not attend the hearing.

The parties signed a 1-year fixed term agreement on July 18, 2019 commencing August 1, 2019. Rent was \$2,300.00 payable on the first of the month. The tenant provided the security deposit of \$1,050.00 on July 18, 2019 by cheque dated July 18, 2019.

The landlord submitted a copy of the tenancy agreement signed by the parties.

The landlord testified that the tenant advised him on July 30, 2019 that he would not be moving in to the unit as he had changed his mind. The landlord learned that the tenant cancelled the cheque for the security deposit. The landlord testified he did not receive any money from the tenant.

The landlord testified that he immediately re-listed the unit on an online web site. He responded to all queries regarding the unit and showed the unit as many times as possible. The landlord stated he initially advertised the unit for \$2,300.00; however, he became concerned that another month would go by without the unit being rented and he decreased the rent to \$2,150.00.

Eventually, the landlord rented the unit on August 20, 2019 for \$2,150.00 monthly commencing September 1, 2019. The landlord received no rent for the month of August 2019.

The landlord claimed compensation in the amount of one month's rent of \$2,300.00 as well as reimbursement of the filing fee.

Analysis

The parties entered into a fixed term tenancy agreement set to begin on August 1, 2019. A tenant may not legally end a fixed term tenancy agreement except in a few limited and specific circumstances provided under the *Act* such as where the landlord has violated a material term of a tenancy agreement [Section 45(3)], a tenant is fleeing domestic violence or going into a care home (Section 45.1), or as authorized by the Director [Section 44(1)(f)].

The tenant provided no valid reason for ending the fixed term tenancy. I find that the tenant breached the tenancy agreement by saying he had changed his mind about moving in, by cancelling the cheque for the security deposit and by not paying rent when it was due.

Where a tenant breaches their fixed term tenancy agreement, the tenant may be held liable to compensate the landlord for loss of rent up to the end of the fixed term. Section 7 of the *Act* provides that where a landlord claims against a tenant for loss of rent, the landlord has a burden to prove that the landlord took every reasonable effort to minimize the losses.

Residential Tenancy Policy Guideline # 16 states the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

As noted above, I found the tenant violated the *Act* by not providing sufficient notice to end the fixed term tenancy. As result, I also find the landlord is entitled to compensation for the lost revenue subject only to their obligation to mitigate losses.

I have reviewed the documentary and oral evidence of the parties. I find the landlord made reasonable efforts to find a replacement tenant following the notification from the tenant that he decided not to move in. The landlord took measures such as reducing the rent in order to obtain a replacement tenant. I find the landlord took all reasonable measures to mitigate the landlord's losses.

Based on the landlord's uncontradicted credible testimony, I find the landlord incurred damages in the amount of \$2,300.00 for one month's lost rental.

I therefore find the landlord is entitled to compensation from the tenant for the loss of rent for the month of August 2019. As the landlord's claim is successful, the landlord is entitled to reimbursement of the filing fee.

I therefore award the landlord \$2,300.00 for loss of rent and \$100.00 for the filing fee for a total monetary order of \$2,400.00.

Conclusion

The landlord is awarded a Monetary Order in the amount of \$2,400.00 to serve and enforce upon the tenant.

This order must be served on the tenant. If the tenant fails to comply with this Order, the tenant may file the order in the Provincial Court (Small Claims) to be 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 28, 2019

Residential Tenancy Branch