



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Meicor Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S

Introduction

In this dispute, the landlord sought compensation in the amount of \$768.00, later reduced to \$375.00, against their former tenant, pursuant to section 67 of the *Residential Tenancy Act* (the “Act”).

The landlord applied for dispute resolution on December 2, 2019 and a dispute resolution hearing was held, by way of telephone conference, on May 4, 2020. The landlord’s agent attended the hearing, was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenant did not attend.

The landlord’s agent testified that they served the Notice of Dispute Resolution Proceeding package by way of registered mail on December 9, 2019; that mail was returned by Canada Post as unclaimed. The agent obtained the tenant’s newest mailing address, to which a second copy of the Notice of Dispute Resolution Proceeding package was sent by registered mail on January 6, 2020. That mail was not returned unclaimed. Based on the undisputed oral testimony of the agent I find that the landlord served the tenant with the Notice of Dispute Resolution Proceeding package in compliance with section 89 of the Act.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure*, to which I was referred, and which was relevant to the issue of this application.

Issue

Whether the landlord is entitled to the compensation sought.

Background and Evidence

The landlord's agent testified and confirmed that the tenancy started on September 1, 2018 and ended at the end of November 2019. Monthly rent, due on the first of the month, was initially \$750.00, later increased (in compliance with the Act) to \$768.00. I note that the tenancy was a period term tenancy at the time the tenancy ended. The tenant paid a security deposit of \$375.00, which is currently held in trust by the landlord. A copy of the written tenancy agreement and notice of rent increase was submitted into evidence.

On November 1, 2019, the tenant gave notice to the landlord (by way of e-mail, a copy of which was submitted into evidence) that they were ending the tenancy and "planning on moving to Prince Rupert on November 18th". The agent testified that the tenant paid rent for November 2019, but that, despite placing advertisements in various places (such as the local available rental listings online), they were unable to find a new tenant for December 2019. After being unsuccessful in renting out the rental unit, the landlord ended up doing some work on it and finding a new tenant for March 2020.

While the tenant was potentially liable for rent for December 2019, the landlord's agent advised that they were only seeking to retain the tenant's security deposit of \$375.00.

Analysis

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

. . .

- 67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this dispute, the tenant breached section 45(1) of the Act, which states:

A tenant may end a periodic 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, and

(b) 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.

Here, the tenant provided notice to end the tenancy earlier than one month after the date the landlord received the notice. She gave notice on November 1 that she would be moving out on November 18, although, strictly speaking and considering rent for November was paid, the tenancy effectively ended on November 30, 2019. In any event, I find that, based on the agent's testimony and the documentary evidence presented, namely the email notice from the tenant, the tenant breached section 45(1) of the Act. And, but for the breach of the Act, the landlord suffered loss of rent from that breach.

I find that, based on the evidence of the agent regarding their inability to find a new tenant for December 2019 – despite putting up advertisements – the landlord lost at least a month's worth of rent, which was \$768.00. Further, putting up an advertisement online in the local website listings (similar to Craigslist, it would appear) is a reasonable step in trying to minimize loss of rent.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for the amount sought of \$375.00 and are so awarded this amount.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlord may retain the tenant’s security deposit of \$375.00 in full satisfaction of the above-noted award.

Conclusion

The landlord’s application is granted, and the landlord is ordered to retain the tenant’s security deposit of \$375.00 in full satisfaction of its claim.

This decision is made on authority delegated to me under s. 9.1(1) of the Act.

Dated: May 4, 2020

Residential Tenancy Branch