



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Columbia Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNRL-S, FFL

Introduction

The landlord seeks compensation for loss of rent pursuant to section 67 of the *Residential Tenancy Act* ("Act"). In addition, they seek recovery of the application filing fee pursuant to section 72 of the Act.

The landlord filed an application for dispute resolution on August 14, 2020 and a hearing was held at 1:30 PM on December 3, 2020. The landlord's agent ("agent") attended the hearing and was given a full opportunity to be heard, present testimony, make submissions, and call witnesses. During the seven-minute-long hearing the tenant did not attend.

The agent confirmed that the Notice of Dispute Resolution Proceeding package was served on the tenant by Canada Post registered mail; a copy of the registered mail receipt and tracking number were in evidence. Given this undisputed oral and documentary I find that the tenant was served in compliance with the Act.

Issues

1. Is the landlord entitled to the compensation sought?
2. Is the landlord entitled to retain the tenant's security deposit?
3. Is the landlord entitled to recovering the application filing fee?

Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which is relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began on August 19, 2019 and it was fixed-term tenancy that was supposed to end on August 31, 2020. However, the tenancy ended on August 10, 2020 after the tenant gave notice on July 28, 2020 that they would be vacating on July 31, 2020 or August 10, 2020. Monthly rent was \$1,500.00 that was due on the first of the month. The tenant paid a security deposit of \$750.00, which the landlord holds.

The landlord seeks compensation for rent for August 2020 because the tenant gave notice before they were permitted to do so under the Act and did not pay the rent for August. The landlord sought to mitigate their loss by advertising the property almost immediately after the tenant gave notice to vacate. In this application the landlord seeks compensation in the amount of \$1,500.00, plus \$100.00 for the filing fee.

Submitted into evidence by the landlord were the following documents: the tenancy agreement, the tenant's rent ledger, a monetary order worksheet, the tenant's notice to vacate, the incoming and outgoing inspection of the rental unit, a copy of the document showing the advertised rental, and a registered mail receipt for the Notice of Dispute Resolution Proceeding hearing package.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

Section 45(2) of the Act deals with the method by which a tenant can end a fixed term tenancy. This section of the Act reads as follows:

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 (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.

In this case, the tenant gave notice to end the tenancy in breach of section 45(2) of the Act. But for the tenant's non-compliance with the Act, the landlord would not have suffered a loss of \$1,500.00 in rent. Finally, the evidence of almost-immediate advertising of the rental unit establishes that the landlord sought to do what was reasonable to mitigate their loss.

Taking into consideration all the undisputed 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 compensation in the amount of \$1,500.00.

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant their claim for reimbursement of the \$100.00 filing fee, for a total award of \$1,600.00.

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 the landlord to retain the tenant's security deposit of \$750.00 in partial satisfaction of the above-noted award. The balance of the award (\$850.00) is granted by way of a monetary order that is issued to the landlord, in conjunction with this decision.

Conclusion

I grant the landlord's application.

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

Dated: December 3, 2020