



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with applications by the landlord under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- A monetary order for unpaid rent pursuant to Section 67;
- Authorization to retain the security deposit pursuant to Section 38(1)(d); and
- Authorization to recover the filing fee for this application from the tenants pursuant to Section 72

The corporate landlord was represented by an agent, TC (the *landlord*). Both the tenants appeared. The parties were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses.

The landlord testified the Landlord's Application for Dispute Resolution dated October 12, 2017 was sent to each of the tenants by registered mail on October 19, 2017. The landlord provided Canada Post tracking numbers into evidence. The tenants testified they were in receipt of the landlord's application. I find that the tenants were served on October 24, 2018, five days after mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to recover the amount claimed for unpaid rent and to retain all or part of the tenants' security deposit?
2. Is the landlord entitled to recover the filing fee?

Background and Evidence

The parties executed a fixed term tenancy agreement for twelve months to commence on October 1, 2016 and to end on September 30, 2017. The tenants were required to pay rent of \$1,350.00 a month payable on the first of each month. The tenants paid a security deposit of \$675.00.

The parties agree the tenants sent the landlord a text on September 15, 2017 informing him they were moving out at the end of September 2017. The landlord replied the following day saying the notice was too late and they had to give one month's notice. The tenants did not pay rent for the month of October 2017 saying the two weeks notice was 'the best we can do'.

On October 12, 2017, the landlord submitted a claim for a monetary order for unpaid rent pursuant to Section 67 and authorization to retain the security deposit pursuant to Section 38(1)(d) within the required 15-day period. He claims the rent owing (\$1,350.00) for October 2017 is greater than the security deposit (\$675.00) and therefore he is entitled to retain the security deposit in partial satisfaction of the landlord's claim as well as obtain a monetary order for the balance (\$675.00).

The landlord testified the tenants left the premises clean and undamaged at the end of the tenancy. The landlord makes no request for a monetary order for damages to the unit.

The parties agree the tenants provided their forwarding address in writing to the landlord on September 30, 2017. The tenants did not authorize the landlord to retain any portion of their security deposit at any time. The tenants have not received a refund of their security deposit.

In summary, the tenants claim the landlord is not entitled to a monetary order or to keep the tenants' security deposit is for the following reasons:

- The tenancy agreement specifically contains a term the tenancy ended on September 30, 2017 and no notice is necessary;
- The reason for the failure of the landlord to rent the premises until November 1, 2017 is one or both of the following:
 - The tenants gave two weeks' notice which is adequate to find a replacement tenant if the landlord used reasonable efforts to do so; and/or

- The unit was uninhabitable (for many reasons, including the presence of mould) and was being repaired by the landlord in October 2017 during which time the landlord was not actively seeking tenants.

The landlord testified reasonable efforts were made to secure replacement tenants. The landlord stated he posted a sign on the premises and advertised the unit on an online site, renewing the listing “every three or four days”.

Despite some interest in the property, the landlord said the failure to rent earlier than November 1, 2017 was not due to his lack of efforts. Instead, the failure could be attributed to the fact most prospective tenants must give thirty days’ notice and could not rent the unit earlier than November 1, 2018.

The tenants stated in a September 30, 2017 text to the landlord that the unit needed repairs:

You could have that suite up for rent for months and the facts don’t change that the heat doesn’t work. The suite leaks and floor is mouldy in bedroom and will never be fixed, as there is a irrigation issue with the outside of the apartment and can never be fixed as the cost is to high. This was brought up in the past as we were advise when flooring was being replaced when issues were brought up in the rental agreement term. [sic]

The tenants submitted in evidence photos of black tarp on the exterior of the unit after they vacated purportedly showing repairs were being undertaken by the landlord.

The landlord provided no evidence with respect to repairs.

Analysis

I have considered all the submissions and evidence presented, including those provided in writing and orally. Upon consideration of everything before me, I provide the following findings and reasons with respect to each application.

Tenants’ Notice

The parties entered into a fixed term tenancy agreement set to expire on September 30, 2017. The agreement states the tenancy will continue thereafter on a month-to-month basis after September 30, 2017 and provides for a one-month notice of termination.

Section 45 (2) considers how a tenant ends a fixed term tenancy, stating:

Tenant's notice

45(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

(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.** (emphasis added)

Therefore, the tenants were required to provide notice in this case on or before August 31, 2017 stating they were leaving on September 30, 2017. The tenants did not provide the notice required under Section 45(2) and under the agreement.

Minimization of Loss or Damage

I will now consider whether the landlord established reasonable efforts to minimize the landlord's losses after the tenants provided only two weeks' notice.

Section 7 of the Act imposes an obligation on the landlord to do whatever is reasonable to minimize the damage or loss, stating in part:

Liability for not complying with this Act or a tenancy agreement

7 (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.** (emphasis added)

Residential Tenancy Policy Guideline 3: *Claims for Rent and Damages for Loss of Rent* provides information and policy statements with respect to claiming for loss of rent. The policy guideline states, in part:

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

The landlord testified he posted a sign and advertised on an online site which he renewed every few days.

However, the landlord's evidence was very limited. He provided no copies of advertisements or evidence of any kind of efforts to find replacement tenants. The landlord did not submit any evidence of contacting other real estate offices to inform them of the rental unit or of placing advertisements in other places commonly used for advertising of rental units. The landlord provided no testimony any prospective tenants viewed the premises during the time remaining for occupancy in September 2017 or during the month of October 2017 when the unit was vacant.

Based on the parties' evidence including the limited and unconvincing evidence of the landlord to rent the vacant unit, I am not satisfied the landlord has made reasonable efforts to mitigate losses as required under the *Act*.

Repairs

I will now address the tenants' claim the unit remained vacant for the month of October 2017 for the landlord to carry out repairs.

The landlord did not dispute the tenants' evidence the unit needed repairs before being rented again. The landlord did not respond to the tenants' assertion that repairs were being carried out in the unit during the month of October 2017. He did not reply to their statement the repairs were the primary reason the unit was unoccupied during that month. The landlord did not deny that the picture of the tarp on the outside of the rental unit submitted by the tenants was evidence repairs were being carried out.

Based on the parties' evidence, including the failure of the landlord to satisfactorily address the evidence of the tenants regarding the carrying out of repairs during the month of October 2017, I find the landlord has failed to establish the unit was available for rent during that month.

I therefore deny the landlord's request for a monetary order for rent for the month of October 2017 and deny the landlord's request to apply the security deposit to outstanding rent.

I consequently find the tenants are entitled to the return of the balance of their security deposit held by the landlord in the amount of \$675.00.

Conclusion

Based on the above, the landlord's Application for Dispute Resolution is dismissed in its entirety without leave to reapply.

The tenants are awarded a monetary order in the amount of \$675.00 to serve and enforce upon the landlord. The landlord's claims are dismissed without leave to reapply.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and 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: May 16, 2018

Residential Tenancy Branch