



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FLOCO ENTERPRISES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, FFL

Introduction

On October 12, 2017, the Landlord made an Application for a dispute resolution proceeding seeking the following under the Act, regulation, or tenancy agreement:

- A Monetary Order for compensation or damage pursuant to Section 67;
- A Monetary Order for unpaid rent pursuant to Section 67; and
- To recover the filing fee.

At the start of the hearing, I confirmed that the Landlord attended the hearing, and that F.M. attended the hearing and advised that she was the agent and property manager for the Landlord. The Tenant attended the hearing on his own behalf, and G.K. attended the hearing and advised that he was the agent for the Tenant. All in attendance provided a solemn affirmation.

F.M. testified that she accompanied the Landlord to the Tenant's place of employment and the Landlord personally served the Tenant the Notice of Hearing package on October 12, 2017. The Landlord advised the Tenant of the contents of the package. The Tenant advised the Landlord that it was not appropriate for him to enter his place of employment and serve documents; however, he confirmed in the hearing that he received this package. While the Landlord was cautioned in the hearing that serving in person at their place of employment is not appropriate, I am satisfied that the Notice of Hearing package was served in fact, and in accordance with section 71 of the Act.

Upon reviewing the evidentiary submissions, the Tenant's evidence did not appear to meet the requirements of Rule 3.15 of the Rules of Procedure as it was mailed to the Landlord on April 29, 2018. F.M. stated that this package was received just before the hearing and she did not have an appropriate amount of time to review the evidence and respond. As per Rule 3.17 of the Rules of Procedure, an arbitrator has the discretion to determine whether to accept evidence that does not meet the criteria established provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice. As I am not satisfied that the Tenant's evidence was served in accordance with

the Rules of Procedure, I have not considered this evidence in my decision. However, the Tenant was permitted to testify orally to this evidence.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation or damage pursuant to Section 67;
- Is the Landlord entitled to a Monetary Order for unpaid rent pursuant to Section 67; and
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord stated that the tenancy started on December 1, 2016 as a fixed term for one year ending on November 31, 2017. Rent was established at \$1,400.00 per month, due on the first of each month. A security deposit of \$700.00 was also paid. The Tenant confirmed these details.

The Tenant testified that he had been contacting the Landlord by email stating that he might vacate the premises in mid-June. He also stated that on June 29, 2017, F.M. texted him asking him to call her and when he did, she became verbally abusive regarding a window that was left open. F.M. stated that she would be visiting the rental unit; however, the Tenant advised her that she was required to give 24 hours notice to enter the rental unit. After the phone call, the Tenant stated that F.M. went to the rental unit and attempted to enter forcefully. He stated that he stopped talking to F.M. after this episode, as she used many profanities and was disrespectful, and that he did not know what else to do.

F.M. testified that she had received emails from the Tenant stating that his father was ill, that he inquired about sub-letting the unit, and that she offered to end the tenancy early; however, the Tenant stated that he was just wondering about his options. She advised that the Tenant was belligerent when advising her of her requirement to give the proper written notice to enter the rental unit and with respect to the strata rules. She confirmed that she lost her cool and told the Tenant "where to go" and again offered an early end of tenancy but the Tenant refused this offer.

The Tenant submitted that he vacated the rental unit on September 1, 2017 due to the history of harassment and bullying from the Landlord, and that he did not advise the Landlord that he was leaving. F.M. stated that a neighbour contacted her to advise her that the Tenant may have been "doing a midnight run"; however, F.M. did not think that the Tenant would do that. F.M. then testified that she was notified in mid-September of September's rent cheque being returned with insufficient funds so she went to the rental unit and knocked on the door, but there was no response. She put a note on the door stating that she stopped by but did not receive a response. She then posted a 24-hour notice on the door advising that she would enter the rental unit and when she went in the next day, she had discovered that the Tenant had vacated the property. The time frame for this was towards the end of September.

F.M. indicated that to mitigate her losses, she advertised the rental unit for October 1, 2017, she cleaned the property, and she had debris that was left by the Tenant removed from the rental unit. She submitted that she re-rented the rental unit for November 1, 2017 so she is seeking compensation for September and October 2017 rent. In addition, in her written submissions, she is seeking compensation of \$50.00 for a strata bylaw infraction, \$168.20 for various cleaning and disposal fees (the total was \$868.20; however, she arbitrarily applied the \$700.00 security deposit to this amount), and she submitted a bathtub repair bill of \$274.40 but she did not add this to her monetary order worksheet. During the hearing, she stated that she had condition inspection reports but she did not submit them into her written evidence package.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the Act that are applicable to this situation. I will provide the following findings and reasons when rendering this decision.

The first issue I will address is with respect to the Landlord's claim for lost rent. There is no dispute that the parties entered into a fixed term tenancy agreement from December 1, 2016 ending November 31, 2017, yet the tenancy effectively ended when the Tenant vacated the rental unit on September 1, 2017. Sections 44 and 45 of the *Residential Tenancy Act* set out how tenancies end. It also specifies that a Tenant must give written notice to end a tenancy and that notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy.

While the Tenant attempted to portray a scenario where it was urgent for his well-being to end the tenancy in the manner that he did, and that it was justified, there is no provision in the Act which allows a Tenant to end a tenancy in this manner. As such, I am not satisfied that the Tenant ended the Tenancy in accordance with the Act. Therefore, I find that the Tenant vacated the rental unit contrary to Sections 44 and 45 of the Act. Furthermore, I find that the evidence indicates that as a result of the Tenant's actions, the Landlord suffered a rental loss.

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, in claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit. As I am satisfied that the Tenant did not give the Landlord any notification whatsoever that he was ending the tenancy and vacating the rental unit and that the Landlord only discovered this when she entered the rental unit in late September, I am satisfied that the Tenant is responsible for September's rent. Furthermore, I am satisfied based on the evidence before me that F.M. mitigated her loss by taking the necessary steps to re-rent the premises as quickly as possible. However, while she claimed loss of October's rent stating that she had a new tenant move into the premises on November 1, 2017, F.M. inadvertently submitted in her

written submissions a Form K for the new tenant that stated that this new tenant moved into the rental unit on October 16, 2017. When I questioned F.M. about this new tenant, she stated that she allowed the tenant to move into the rental unit but she did not charge this person rent for half the month. As this was the Landlord's choice, I am not satisfied that the Landlord should be awarded the entire month's rent for October. Consequently, based on the Landlord's efforts, I am satisfied that the Landlord sufficiently mitigated their damages and is entitled to compensation for lost rent for September 2017 and half a month rent for October 2017, totaling \$2,100.00.

With respect to the Landlord's claim for the bylaw infraction fine that the Tenant incurred, the Landlord has not provided any evidence of a Form K that the Tenant signed, nor has the Landlord provided any evidence that this fine was levied. As such, I dismiss this portion of the Landlord's claim.

With respect to the cleaning and disposal costs, the Landlord provided an invoice of what was required to bring the rental unit up to an acceptable health, safety, and housing standard established by law; however, the Landlord did not provide any other evidence to corroborate that these steps were necessary, nor did the Landlord provide any copies of the condition inspection reports. During the hearing, the Tenant refuted the Landlord's allegation of the condition he left the premises in. Without any supporting evidence on the Landlord's behalf, I do not find there to be sufficient evidence to justify the Landlord's claims. As such, I dismiss this portion of the Landlord's claim. However, the Tenant did acknowledge that he left behind a barbeque. I find it important to note that section 37 of the Act outlines the requirements for the condition that the Tenant is supposed to leave the rental unit in at the end of the tenancy. While I do not find this to be an egregious act, I do accept that this was an item that was left behind that required the Landlord to deal with. Consequently, I award a nominal amount of \$100.00 towards disposal of the Tenant's belongings.

As the Landlord has been partially successful in their claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of section 72 of the Act, I allow the Landlord to retain the security deposit in partial satisfaction of the amount awarded.

Pursuant to sections 67 and 72 of the Act, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

September 2017 Rental Loss	\$1,400.00
Half of October 2017 Rental Loss	\$700.00
Disposal Costs	\$100.00
Recovery of Filing Fee	\$100.00
Less Security Deposit	-\$700.00
TOTAL MONETARY AWARD	\$1,600.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of \$1,600.00 in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 22, 2018

Residential Tenancy Branch