



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOLLD REAL ESTATE MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords filed under the *Residential Tenancy Act*, (the “Act”), for a monetary order for damages, permission to keep the security deposit and to recover the cost of the filing fee for the application from the Tenant.

The Landlords attended the hearing and were affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documents was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlords testified that the Application for Dispute Resolution and Notice of Hearing documents had been sent by registered mail on October 20, 2017, a Canada post tracking number was provided as evidence of service. I find that the Tenant had been duly served with the Notice of Hearing documents pursuant to section 90 of the *Act*.

The Landlords were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

- Is the landlord entitled to monetary compensation for damages?
- Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlords testified that the tenancy began on October 15, 2016, as a two-year fixed term tenancy. Rent in the amount of \$8,800.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$4,400.00 security deposit. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The Landlords testified that the Tenant served them with written notice to end his tenancy on August 15, 2017. The notice from the Tenant indicated his intent to vacate the rental unit on September 30, 2017. A copy of the move out inspection, conducted on September 30, 2017, by the Landlord B.M. and the Tenant was entered into documentary evidence. The inspection document was completed and signed by both the Tenant and B.M. At the bottom of the inspection document the Tenant had signed that he was responsible for a liquidated damages charge of \$2,640.00 and the rent until the property was re-rented.

The Landlords testified and provided documentary evidence that they took immediate steps to attempt to find a new person to rent the property. The Landlord also testified that they were not able to re-rent the unit until January 15, 2018, at the reduced rental amount of \$8,000.00. The Landlords provided a copy of the new tenancy agreement in documentary evidence.

The Landlords stated that they are not seeking to recover the loss of rental income due to having to lower the rent. However, they are requesting compensation for the loss of rental income for October, November, and December 2017, the months in which the rental unit was empty. Additionally, they are also requesting the liquidated damages, due to the Tenant's breach of the tenancy agreement.

The Tenant provided seven pages of documentary evidence; however, as the Tenant did not attend this hearing, and therefore did not present his evidence as required under section 7.4 the Rules of Procedure, I will not consider that evidence in my decision.

Analysis

Based on the above testimony, documentary evidence and on the balance of probabilities, I find as follows:

Section 45(2.b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

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.

I find that the Tenant's tenancy agreement could not have ended in accordance with the Act until, October 31, 2018. I find that the Tenant was in breach of his tenancy agreement when he issued his notice to the Landlords to end his tenancy as of September 30, 2017.

I accept the documentary evidence submitted by the Landlords that shows the Tenant agreed, in writing, that he understood due to his breach of the tenancy agreement he would be responsible for paying the rent until the unit could be re-rented, and to pay the liquidated damages clause contained in his tenancy agreement. Additionally, it is understandable that it would take a few months to find new renters able to afford the rent on this unit. I also note that the Landlords reduced the rent in order to expedite the unit's re-rental.

I find that the landlords took the necessary steps to re-rent the unit, and have satisfied me that they fulfilled their statutory duty to mitigate their losses due to the Tenant's breach of the tenancy agreement.

Therefore, I find that the Landlords have established an entitlement to a monetary award for loss of rental income, and the liquidated damages. The Landlords are also authorized to retain the Tenants security deposit as partial satisfaction of this award.

Pursuant to section 67 of the *Act*, I grant the Landlords a monetary order in the amount of \$24,640.00. The Order is comprised of \$26,400.00 (3x\$8,800.00) as compensation for loss of three months of rental income, \$2,640.00 in liquidated damages, less the \$4,4000.00 that the Landlords hold as a security deposit.

As the Landlords were successful in this application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application.

| <u>Rent</u> | <u>Due</u> | <u>Paid</u> | <u>Outstanding</u> |
|------------------------|------------|-------------|--------------------|
| October 1, 2018 | \$8,800.00 | \$0.00 | \$8,800.00 |
| November 1, 2018 | \$8,800.00 | \$0.00 | \$8,800.00 |
| December 1, 2018 | \$8,800.00 | \$0.00 | \$8,800.00 |
| Total Outstanding Rent | | | \$26,400.00 |
| Liquidated Damages | | | \$2,640.00 |
| Filing Fee | | | \$100.00 |
| | | | \$29,140.00 |
| Security Deposit Held | | | -\$4,400.00 |
| Due | | | \$24,740.00 |

Conclusion

I find for the Landlords under sections 67 and 72 of the Act. I grant the Landlords a Monetary Order in the amount of \$24,740.00 for loss of rental income, liquidated damages, and the recovery of the filing fee for this application. The Landlords are provided with this Order 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