



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-L, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for monetary compensation for loss as a result of this tenancy pursuant to section 67 and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended this hearing: two landlords and one tenant. Both parties were given a full opportunity to present evidence, submissions and to testify. The tenant confirmed receipt of the landlord's Application for Dispute Resolution and evidence.

The landlord made an oral request to amend his application and increase the monetary amount sought against the tenant. The landlord did not make a formal application prior to this hearing, as required and therefore, I dismiss his application (at this hearing) to amend the amount sought against the tenant.

Issue(s) to be Decided

Is the landlord entitled to a recover financial loss after the tenant ended his fixed term tenancy early? Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on July 1, 2017 as a 1 year fixed term tenancy with a monthly rental amount of \$2850.00. The tenant paid a \$1425.00 security deposit at the outset of the tenancy. The landlord testified that he continues to hold the deposit. The landlord sought \$1425.00 from the tenant because the tenant ended the tenancy before the end of the fixed term.

The tenant testified that he provided notice to the landlord on September 10, 2017 by telephone that he intended to vacate the rental unit. The landlord submitted a copy of an email from the tenant that verified his intention to vacate the rental unit on September 30, 2017. The tenant vacated the rental unit on September 30, 2017. The landlord and tenant both took part in a condition inspection at move-out. The landlord submitted a copy of the condition inspection form from move-in and move-out. At move-in, the report indicated that the rental unit was brand new. The landlord did not record any damage at the move-out inspection.

The tenant testified that he provided a forwarding address on a date at the beginning of October 2017. He testified that, when giving notice to vacate to the landlord, the landlord agreed to return the tenant's security deposit if he was able to re-rent the unit for October 1, 2017. The tenant testified that the landlord told him that the unit had been re-rented for October 1, 2017. He testified that, when he received the landlord's Application for Dispute Resolution, he was advised that the landlord had used an agency that charged \$1400.00 to assist in re-renting the unit and that the landlord's prospective tenant for October 1, 2017 had fallen through.

The landlord testified that the prospective tenant for October 1, 2017 did not move into the rental unit. The landlord provided undisputed testimony that he was unable to re-rent the unit until January 1, 2018. Both landlords in attendance at this hearing testified that the unit was not re-rented until this date.

The landlord sought to recover \$1425.00 from the tenant. He submitted that the tenant was not entitled to end the fixed term tenancy before the expiry date of that tenancy. Furthermore, he testified that the tenant did not provide him with 30 days' notice that he intended to vacate the unit. Finally, the landlord testified that he had costs to re-rent the unit and rental loss as a result of the tenant's end to the tenancy.

The tenant submitted that the landlord's decision to pay what he described as an excessive amount to assist in re-renting and the failure of the prospective tenant to move in on October 1, 2017 are not his fault: these are the responsibility of the landlord. The tenant submitted that he should be entitled to the return of his full security deposit amount.

Analysis

The tenant provided a vacate notice prior to her move out and vacated the rental unit prior to the end of his agreed-to 12 month fixed term tenancy. I find that the tenant

made an informed choice to end the tenancy early, based on circumstances related to his employment. The tenancy was set as a fixed term from the outset. The residential tenancy agreement, reflecting a fixed term was signed and initialled by both parties. That agreement provides possible consequences if a fixed term tenancy is ended before the end date set in the agreement: that the tenant may be required to pay rental loss or any difference in rental amount until the end of the fixed term, as originally set. I find that the tenant agreed to the terms of the tenancy and the consequences of ending the fixed term tenancy early.

The residential tenancy agreement is clear that this tenancy was intended to continue for 12 months from July 1, 2017. Residential Tenancy Policy Guideline No. 30 provides direction on the definition and terms of a fixed term tenancy as used in section 44 of the Act:

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date...

The tenant claimed that the landlord agreed in writing to the return of the security deposit. The tenant refers to the landlord's email stating, if a new tenant is found to take over the tenancy at the beginning of the month, the landlords would return his security deposit. That email from the landlord to the tenant also states that the tenant may be responsible for the remainder of a fixed term if the landlord does not find a new tenant to take over immediately.

The tenant chose to vacate the unit prior to the end of the fixed term. The landlord proved (with the provision of the residential tenancy agreement) that the tenant was aware of the consequences for ending the fixed term early. I provide Residential Tenancy Policy Guideline No. 3 for the parties – the guideline provides parameters of this type of damage claim by a landlord,

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. ...

The landlord provided undisputed testimony that he found a tenant for the beginning of the month, after efforts to do so, but that tenant ultimately did not move in to the rental unit. The landlord provided undisputed testimony, supported by his documentary

evidence, that he did not re-rent the unit until January 1, 2018. The landlord's statement regarding the return of the tenant's security deposit was provisional on finding a tenant to take over on October 1, 2017.

I accept the landlord's testimony at this hearing as well as the supporting documents supplied by the landlord to document his efforts to re-rent the unit as soon as possible. I also accept the landlord's explanation and evidence regarding the prospective tenant that did not move in and his efforts to re-rent. I find that the landlord did take some steps to mitigate any loss or amount owed by the tenant. I note that the landlord is not entitled to compensation totalling 3 months' unpaid rent based on his failure to amend his application in a timely fashion. However, I find that the landlord is entitled to a monetary amount for the rental loss in the amount of the tenant's security deposit. I find that this rental loss is a direct result of the tenant's lack of sufficient notice to end the tenancy as required by section 45(2) of the Act.

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.

The tenant did not provide sufficient notice under section 45(2) to end a fixed term tenancy as the tenant's end of the tenancy date was not earlier than one month after the landlord receives the notice and was not provided to the landlord on the day before the rent is due (the 1st of each month). The tenant's notice was much earlier than the end date specified in the tenancy agreement.

A fixed term tenancy creates security for both parties to the agreement. Based on all of the evidence submitted at this hearing, I find that the tenant breached the conditions of the residential tenancy agreement by ending the tenancy before the pre-determined expiry date. I accept that the landlord made efforts to re-rent the tenants' unit before the tenant vacated the rental unit and after the tenant vacated. I accept that the landlord has provided sufficient evidence to show that the rental unit was not re-rented until

January 1, 2018. I find that the landlord has proved financial loss and has proved that the loss is a result of the actions of the tenant in ending the tenancy before the end of the fixed term.

In accordance with section 72 of the Act, I find that the landlord is entitled to retain \$1425.00 security deposit to offset his costs and rental loss due to the early end to this tenancy.

As the landlord was successful in this application, I find that the landlord is also entitled to recover the \$100.00 filing fee for this application.

Conclusion

I allow the landlord to retain the tenant's \$1425.00 security deposit.

In addition, I issue the landlord a monetary award in the amount of \$100.00 for the remainder of the filing fee cost.

The landlord is 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 *ACT Tenancy Act*.

Dated: May 10, 2018

Residential Tenancy Branch