



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for money owed or compensation for damages or losses under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenants confirmed that they received a copy of the landlord's original dispute resolution hearing package, the amended hearing package and the landlord's written evidence by registered mail, I find that the tenants were duly served with these packages in accordance with sections 88 and 89 of the *Act*. As the landlord's representative (the landlord) also confirmed that they had received the tenants' written evidence, I find that the tenants' written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit

in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The tenants first moved into this rental unit on February 1, 2015. At least two fixed term tenancy agreements were entered into between the parties before the most recent fixed term tenancy was signed covering the period from August 1, 2017 until January 31, 2018. Monthly rent was set at \$8,200.00 for the final fixed term tenancy, payable in advance on the first of each month. For the final fixed term, the monthly rent included hydro and cable. The landlord continues to hold the \$3,900.00 security deposit paid on January 19, 2015.

The landlord's amended application for a monetary award of \$11,638.00 plus recovery of the \$100.00 filing fee included the following items:

Item	Amount
Unpaid November 2017 Rent	\$8,200.00
Loss of Rent December 1-13, 2017	\$3,438.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Requested	\$11,738.00

Although the tenants had been letting the landlord know that they would be needing a larger rental unit as their family would be growing, the tenants' first specific mention that they would be ending their tenancy by October 30, 2017 occurred by way of an October 5, 2017 email. Tenant JK gave undisputed sworn testimony that on October 10, 2017, they gave the landlord a written notice to end this tenancy by October 30, 2017.

The landlord gave written evidence and sworn testimony that he advertised the availability of the rental unit on a popular housing website on November 1, 2018. He testified that he kept renewing this advertisement as a means of ensuring that the advertisement was current so as to attract maximum interest in the rental unit. As this high-end rental unit had not been painted and there were holes where the flat screen tv had been mounted in the wall and other holes from paintings, the landlord said that it would be necessary to have the rental unit painted before it could be re-rented. The landlord said that he did show the rental unit to a prospective tenant on November 4, before the repainting was done on November 14; however, the rental unit did not show well at that time. The landlord said that he did encounter some delays in securing contractors to paint the premises. Shortly after the rental unit was repainted, the

landlord was able to find a tenant who signed a lease on November 28, 2017 for a rental that was to commence on December 15, 2017. This new tenant agreed to pay \$8,500.00 per month, which was also to cover hydro and cable and an upgraded internet connection for the rental unit. The landlord testified that it is difficult to locate tenants willing to move into a high end rental unit of this type in November or December.

The tenants gave sworn testimony supported by emails in which they maintained that they offered to assist the landlord in conducting showings of the rental unit and to use their own network of potential prospects to assist the landlord in re-renting the rental unit. They asserted that the landlord ignored these offers and by doing so did not properly explore potential renters who may have taken occupancy earlier than mid-December 2017, when the landlord was able to secure new tenants for the rental unit. Tenant CG said that since they had been great tenants and had been willing to assist the landlord to find new tenants, they should not be held responsible for any loss of rent that the landlord experienced. The tenants believed that the landlord ought to have returned their security deposit in full, rather than apply for a loss of rent for any portion of the remainder of their fixed term tenancy.

The landlord said that he did receive some enquiries, which he assumed had come from the tenants' circle of workplace colleagues. He noted that those making these enquiries were only interested in very short term rentals, ranging from between 2 1/2 weeks to 3 months. He testified that there is a building bylaw which restricts rentals to at least six months.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the January 31, 2018 date specified in that agreement. As such, the landlord is entitled to compensation for losses they incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for November or December 2017, and that they ended their fixed term tenancy prior to November 1, 2017. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Although this was a fixed term tenancy, I also note that even in a month to month tenancy, section 45(1) of the *Act* requires a tenant to give a landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for November 2017, had this been a month-to-month tenancy, the tenants would have needed to provide their written notice to end this tenancy before October 1, 2017. Section 52 of the *Act* requires that a tenant provide this notice in writing. In this case, written notice to end this tenancy did not occur until October 10, 2017, three weeks before the tenants chose to end their fixed term tenancy.

Based on a balance of probabilities, I find that there was some delay in the landlord taking action to mitigate the tenants' exposure to the landlord's losses. Although the landlord could not have repainted the premises until the tenants actually vacated the rental unit, the landlord provided only limited evidence that they commenced formal attempts to re-rent the premises between October 10, 2017 and the end of that month. The advertisement for the availability of the rental unit was not placed on the popular housing website until November 1, 2017. Similarly, the landlord did not retain the services of a painter until November 14, 2017, which also led to delays in ensuring that this rental unit would show well to prospective renters for this niche in the rental market. Despite these deficiencies, I also note that as early as November 4, 2017, the landlord was showing the rental unit to prospective renters and that the landlord gave undisputed sworn testimony that he continued submitting new advertisements for this rental listing, albeit on the same housing website. There is no doubt also validity to the landlord's observation that the market is very limited for this type of rental unit in November and December each year.

After weighing the above factors, I find that the landlord has partially met the requirements of section 7(2) of the *Act* to mitigate the tenants' exposure to the landlord's

loss of rent following the tenants' premature ending of this tenancy. Given the late provision of notice to the landlord to end this fixed term tenancy, I find that the landlord has established entitlement to a monetary award of \$8,200.00 for the month of November 2017 was responsible.

Had the landlord acted promptly to advertise the availability of the premises and to have the premises repainted, it is possible that the rental unit could have been rented for the original \$8,200.00 that the tenants were expected to pay for the month of December 2017. I find that the landlord's delays were responsible for any loss of revenue for the month of December 2017. I therefore dismiss the landlord's claim for loss of revenue for December 2017.

In coming to these findings, I have considered the tenants' claim that the landlord was at fault in failing to pursue the tenants' offer to assist the landlord in conducting showings and to identify prospective new tenants. Had the landlord advertised the availability of the rental unit in October, it is possible that showings of the then furnished rental unit may have led to prospective tenants taking possession of the rental unit by December 1, 2017. However, I do not share the tenants' view that the landlord's failure to take up their offer to assist with showings or to identify potential renters had a direct bearing on the premises not renting for November 2017. Rather, I find that the short notice provided by the tenants to end their fixed term tenancy was the reason why the landlord was unable to find a new tenant for these premises for November 2017.

In considering this matter, I also take into account that the eventual monthly rental for this rental space was \$8,500.00, \$300.00 more than the tenants had committed to pay by way of their fixed term tenancy that ended three months prior to its anticipated end date. On this basis, I find that the landlord's entitlement to recovery of losses arising out of the tenants' actions in prematurely ending their fixed term tenancy is to be reduced by the amount of additional rent that the landlord received as a result of the increased monthly rental amount the landlord received from December 15, 2017 until January 31, 2018. This results in a reduction in the landlord's monetary award of \$450.00 (i.e., \$300.00 from December 15, 2017 to January 14, 2018 and \$150.00 from January 15, 2018 until January 31, 2018).

I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in this decision.

As the landlord was successful in obtaining a monetary award for losses arising out of this tenancy, I allow the landlord to recover the filing for their application.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, losses arising out of this tenancy and the filing fee, and to retain the tenants' security deposit:

Item	Amount
Unpaid November 2017 Rent	\$8,200.00
Less Additional Rent Obtained by the Landlord from December 15, 2017 until January 31, 2018	-450.00
Less Security Deposit	-3,900.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$3,950.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 11, 2018

Residential Tenancy Branch