



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for a Monetary Order for compensation and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) and the two Tenants were present for the duration of the teleconference hearing. All parties were affirmed to be truthful in their testimony and confirmed that the Notice of Dispute Resolution Proceeding package and evidence were served as required.

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.

Preliminary Matter

At the outset of the hearing, the names of the parties were clarified and it was noted that the name of one of the Tenants was entered incorrectly on the application as the first and last names were reversed. The application was amended in accordance with Section 64(3)(c) of the *Act* to include the correct name of the Tenant.

Issue to be Decided

Is the Landlord entitled to a Monetary Order for compensation?

Is the Landlord entitled to recover the filing fee for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided the following testimony regarding the tenancy. On April 14, 2018, the Tenants signed an Application for Tenancy for a four bedroom rental unit after attending an open house. The rental unit was advertised at \$3,500.00 per month, but the amount agreed upon was \$3,625.00. As the Tenants had brought up concerns regarding the age of the stove and the fridge, it was agreed that these appliances would be replaced and as a result, the monthly rent increased to \$3,625.00. The security deposit was set at \$1,812.50.

The Landlord testified that a Tenancy Agreement was signed on April 20, 2018. The Application for Tenancy and the Tenancy Agreement were both submitted into evidence. The Landlord confirmed that the security deposit was not paid by the Tenants and neither was any amount towards the rent. The tenancy was set to begin on May 28, 2018 and was for a fixed term of one year, to end on May 31, 2019. The Tenants were to begin paying rent on June 1, 2018.

The Landlord stated that on April 24, 2018, he received an email from the Tenants cancelling the tenancy. The Landlord testified that an official letter ending the tenancy was signed on April 24, 2018 and received at his office on April 27, 2018. The email and the notice to end tenancy letter were submitted in evidence. The letter stated that the Tenants did not intend to take possession of the rental unit and that they were providing one month notice to cancel the tenancy.

The Landlord testified that after receiving notice from the Tenants, he tried to re-rent the unit right away by contacting potential tenants who had previously been interested in the unit. He submitted that they found new tenants for the property for a tenancy starting June 15, 2018 at a monthly rent of \$3,500.00. The Landlord submitted in evidence emails and text messages with potential new tenants.

The Landlord is claiming \$1,900.00 in liquidated damages as stated in a clause on the Tenancy Agreement, as well as \$1,812.50 as compensation for half of the rent for June 2018, given that they were not able to re-rent the unit until June 15, 2018.

The Tenants testified that they attended a viewing of the rental unit on April 14, 2018 which ended up being an open house with over 20 people in attendance. The Tenants stated that they felt rushed and that the Landlord was showing the other rental unit in the home, so was not available to show them around or answer questions. Although they wanted more information on the rental unit, they submitted the Application for Tenancy on April 14, 2018. This is when they agreed to pay \$3,625.00 per month in exchange for having the stove and fridge replaced.

The Tenants provided testimony that they asked to see the rental unit one more time before signing the Tenancy Agreement. However, they stated that they felt pressured to sign the Tenancy Agreement and the Landlord sent them the agreement on April 20, 2018. The Tenants submitted a text message exchange with the Landlord into evidence in which the Tenants asked for confirmation of the new stove and fridge. The Landlord responded with confirmation from the property owner and told the Tenants they needed to sign the Tenancy Agreement by 4:00 pm on April 22, 2018.

The Tenants testified that they signed the Tenancy Agreement on April 22, 2018 and went to see the property the next day. After waiting 20 minutes for the Landlord, they felt rushed as he was there to show new tenants the other rental unit on the property at the same time. The Tenants provided testimony that it was during this viewing of the rental unit that they became aware that they would not be able to use the garage, that parking would be shared with the other tenants of the home and that some of the other appliances in the home were also in need of replacement.

The Tenants submitted that they sent an email to the Landlord on April 23, 2018 to end their tenancy and followed this up with an official end of tenancy letter signed April 24, 2018. The letter confirmed that they would not be moving into the rental unit and that they were providing one month notice.

The Tenants clarified that although the Tenancy Agreement is dated April 20, 2018, it was sent to them by the Landlord through electronic means with the date already filled out. They submitted in evidence the email from when the document was signed, showing the date the document was completed as April 22, 2018.

The Landlord responded to the Tenants' testimony and stated that he did not pressure them to sign the Tenancy Agreement and that they had plenty of time at the open house to look around the rental unit and property.

The Tenants replied by stating that they had made it clear all along that they had concerns that needed addressing. They stated that they felt pushed to sign the Tenancy Agreement quickly before all of their questions were answered or they had a chance to look at the rental property again.

The Landlord provided testimony that the liquidated damages of \$1,900.00, as per the Tenancy Agreement, represents the fees that the property owner pays to the property management company to find new tenants. The Tenants responded by questioning whether this fee was paid by the owner twice to find tenants for June 2018, despite them not moving in. They submitted that the owner likely only paid this fee once and therefore they should not be responsible.

The Tenancy Agreement was submitted in evidence and the liquidated damages statement is the following:

'If a tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$1900 as liquidated damages and not as a penalty for all costs

associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.’
(Reproduced as written)

Analysis

Based on the evidence and testimony of both parties, and on a balance of probabilities, I find as follows:

Although the Landlord and Tenant were in disagreement as to the date the Tenancy Agreement was signed and whether the Landlord pressured the Tenants into signing the Tenancy Agreement, they both agreed that a Tenancy Agreement was signed in April 2018 for a tenancy to commence May 28, 2018 with the first monthly rent payment due by June 1, 2018.

The parties were also in agreement that no money was paid to the Landlord in the form of a security deposit, rent or otherwise.

I find, despite the Tenants never residing in the rental unit, that a tenancy was established through the signing of the Tenancy Agreement. I refer to Section 16 of the *Act* which states, ‘The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.’

I agree that the Tenants signed a letter to end the tenancy on April 24, 2018 and provided one month notice. However, I also note that in accordance with Section 45(2)(b) of the *Act*, notice to end a fixed term tenancy cannot be ended before the date the fixed term ends. While one month notice will end a periodic tenancy, a fixed term tenancy cannot be ended until the fixed term is over, unless a mutual agreement to end the tenancy is signed or due to the breach of a material term of the tenancy agreement as per Section 45(3) of the *Act*.

As such, I determine that the Tenants were in breach of Section 45(2)(b) of the *Act*, in which a tenant’s notice to end the tenancy cannot be prior to the end of the fixed term.

Pursuant to Section 7(1) of the *Act*, if a party experiences a loss from the other party breaching the *Act*, the party who breached the *Act* must compensate them for that loss. As the Landlord was expecting to have tenants in the rental unit until May 31, 2019, I find that they experienced a loss of rental income due to the Tenants ending the fixed term tenancy early.

However, I also note that in accordance with Section 7(b) of the *Act*, the party claiming the loss must take reasonable steps to minimize that loss. I determine that the Landlord took steps to minimize their loss by attempting to re-rent the rental unit right away, as evidenced by the text messages and emails submitted into evidence and the testimony of the Landlord.

The Landlord did not submit any evidentiary material regarding the new tenancy in the rental unit, however he provided testimony that a new Tenancy Agreement was signed for June 15, 2018 for monthly rent in the amount of \$3,500.00. The Tenants on this application had agreed to monthly rent in the amount of \$3,625.00 to compensate for the cost of replacing the stove and the fridge in the rental unit.

As the Landlord was able to re-rent the unit for June 15, 2018, I find that they experienced a loss of half of a month's rent from the Tenants for the amount \$1,812.50, an amount equivalent to half of \$3,625.00, which would have been paid had the tenancy continued.

In regard to the liquidated damages clause, I look to the *Residential Tenancy Policy Guideline 4: Liquidated Damages* which states that the clause must not be a penalty, and instead must reflect an estimate of damages.

I also refer to the testimony of the Landlord who stated that the amount of the liquidated damages is related to the property management fees of finding a new tenant. I find the Landlord has failed to provide sufficient documentary evidence to support their assertion that the property owner was required to pay the full \$1,900.00 twice. Given that the Tenants did not move into the rental unit and provided notice in April 2018, there was time for the property management company to continue to find tenants for June 2018.

In accordance with this, I find that the Tenants are not responsible for the \$1,900.00 liquidated damages clause. As the Tenants did not reside in the rental unit, I find that the Landlord has failed to establish that they have incurred any of the costs related to preparing a unit for re-rental earlier than expected.

In accordance with the above analysis, I find that the Tenant is responsible for the monthly rent for June 1 to June 15, 2018 in the amount of \$1,812.50. As the Landlord was partially successful in their application, I also award the recovery of the filing fee paid for this application in the amount of \$100.00.

The Landlord is awarded a Monetary Order in the amount of \$1,912.50.

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,912.50** as compensation for half of the monthly rent for June 2018, and for the recovery of the filing fee for this application.

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: July 6, 2018

Residential Tenancy Branch