Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 damage or compensation under the *Act*, pursuant to section 67;
- authorization to retain the tenant's security deposit and pet damage deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that she served the tenant the notice of dispute resolution package by registered mail on December 19, 2017. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The tenant confirmed receipt of the dispute resolution package on December 19, 2017. I find that the tenant was served with this package on December 19, 2017, in accordance with section 89 of the *Act.*

The tenant testified that her first evidence package was posted on the landlord's door on June 6, 2018 and was sent via registered mail on June 6, 2018. The tenant provided the Canada Post Tracking Number to confirm this registered mailing. The landlord confirmed receipt of the tenant's first evidence package. I find that the tenant's first evidence package was served on the landlord in accordance with section 88 of the *Act.* The tenant testified that her second evidence package was posted on the landlord's door on June 12, 2018. The landlord testified that she received the second evidence

package on June 12, 2018. I find that the landlord was served with the tenant's second evidence package in accordance with section 88 of the *Act.*

The landlord testified that her husband personally served an evidence package on the tenant on June 11, 2018. The tenant confirmed receipt of the evidence package on June 11, 2018, 13 days before the hearing.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules"*) state that evidence should be served on the respondence at least 14 days before the hearing. Section 3.11 the *Rules* state that if the arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.

In determining whether the delay of a party serving her evidence package on the other party qualifies as unreasonable delay I must determine if the acceptance of the evidence would unreasonably prejudice a party or result in a breach of the principles of natural justice and the right to a fair hearing. The principals of natural justice regarding the submission of evidence are based on two factors:

1. a party has the right to be informed of the case against them; and
2. a party has the right to reply to the claims being made against them.

In this case, the tenant testified that she had time to review and respond to the evidence contained in the landlord's evidence package. I find that the tenant was informed of the case against her and was able to review and respond to the evidence provided by the landlord. I accept the landlord's evidence package into evidence and find that the tenant was served with the landlord's evidence package in accordance with section 88 of the *Act.*

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit and pet damage deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee for this application from the tenant pursuant, to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This one-year fixed term tenancy began on June 29, 2017 and ended on November 30, 2017. Monthly rent in the amount of $2,500.00 was payable on the first day of each month. A security deposit of $1,250.00 and a pet damage deposit of $1,250.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. A move in inspection and inspection report occurred on June 29, 2017.

Both parties agree on the following facts. On October 18, 2017 the tenant informed the landlord via telephone that she was accepted into social housing and would be moving out of the rental suite at the end of November 2017. The tenant texted the landlord on October 30, 2017, confirming that she would be breaking her lease and moving out on November 30, 2017. A move out inspection and inspection report occurred on December 8, 2017. The tenant provided the landlord with her forwarding address via text message on December 1, 2018.

The landlord is claiming the following compensation as a result of the early termination of the one-year fixed term tenancy agreement:

Item	**Amount**
Electricity Bill- September to November 2017	$93.58
Advertising fees	$73.50
Loss of December 2017 rent	$1,284.68
Loss of January – June 2018 rent	$ 900.00
TOTAL	**$ 2,351.76**

The landlord testified that the tenant did not pay her last electricity bill as stipulated in the tenancy agreement. The landlord entered into evidence an electricity bill addressed to the rental unit, with a billing period of September to November 2017, in the amount of $93.58. The landlord also submitted into evidence a copy of her online banking transactions showing payment of the electricity bill.
The tenant testified that when she moved out of the rental property she was under the impression that she was fully up to date on all of her bills. The tenant argued that since she wasn't provided with this bill when she moved out she should not have to pay it.

The tenant testified that she was aware that electricity was not included in rent and that she had paid an electricity bill in the past. The tenant testified that she did not pay any electricity bill for September to November 2017 for the rental property in question.

The landlord testified that upon learning that the tenant was breaking the 1-year fixed term tenancy agreement, she immediately took measures to rent the unit out for December 1, 2017. On October 22, 2017 the landlord put up an advertisement on Castanet, for $2,500.00, the same rate as the tenant's rent. The landlord re-posted the advertisement on November 11, 2017 and reduced the rental rate to $2,450.00 to try and mitigate the loss faced by the tenant. The landlord then reposted the advertisement again on November 22, 2017 and further reduced the rent to $2,350.00.

In support of these statements, the landlord entered into evidence copies of the advertisements listing the property and copies of her online banking transactions showing Castanet charges totaling $73.50. The landlord testified that the Castanet charges were only for advertising the rental unit and not for any other type of listing. The landlord also testified that she advertised the rental unit on Kijiji and on several facebook groups.

The landlord testified that on December 3, 2017 she signed a tenancy agreement with a new tenant which started on December 15, 2017. The rental rate for that new tenancy agreement was $2,350.00 per month. The landlord submitted the new tenancy agreement into evidence.

The landlord testified that she is seeking the tenant to pay for the loss of rent she suffered from December 1, 2017 to December 14, 2017, when the rental unit was vacant, and compensation for the decreased rent she received from December 15, 2017 to June 30, 2018, the date the fixed term tenancy was set to end.

The tenant testified that the landlord did not do enough to rent out the unit. The tenant testified that there were other places to advertise, such as the newspaper and other websites and that since the landlord did not do absolutely everything possible to rent out this unit, she should not have to pay for the 15 days the rental property remained empty.

The tenant further argued that since the city in question has a very low vacancy rate, the landlord should have been able to rent out the rental unit at $2,500.00. In support of this statement the tenant submitted rental listings for the month of June 2018 that ranged from $2,500.00 to $3,950.00 per month. The tenant argued that she should not

have to pay for the difference in rental income from December 15, 2017 to June 30, 2018 because the landlord should have been able to rent the unit out for $2,500.00.

The landlord argued that the listings provided by the tenant are not accurate as they are from June, not from October to December, when she was attempting to rent out the property in question. The landlord testified that people are less likely to move in the cold of winter than in June or other warm months. The landlord further argued that the rental property listings submitted by the tenant are in a completely different area than the rental property in question.

The tenant testified that she believed that the landlord was only trying to rent the rental unit to friends or family, thereby failing to mitigate her loss. In support of this contention, the tenant submitted a chat message received from the landlord prior to the tenant moving in, in June 2017. The message read as follows: “Ya, the market is crazy!! I didn’t want to post it because I’d rather rent it to [sic] word of mouth. It’s such a cute house I don’t want just anybody in it…”

The landlord testified that in June 2017 she only posted the house for rent on her facebook page and received so much interest that she decided not to post it on any websites. The landlord testified that in June 2017 she thought a better tenancy might result from a word of mouth referral rather than from a website. Both parties agreed that the tenant found out about the rental property through word of mouth/facebook, and not through a rental website.

The landlord testified that in June there were more people looking to rent and that it was easier to find a tenant. The landlord further testified that she knew it would be more difficult to rent out the property for December, so she advertised the property on several websites, and not just on her facebook page. The landlord testified that the tenant who moved in on December 15, 2017 replied to her Castanet add and that she did not know the new tenant before she moved in. The landlord denied the allegation that she was only trying to rent to family and friends.

The tenant argued that she should receive double her pet damage deposit as section 38(7) of the *Act* states that a pet damage deposit may be used only for damage caused by a pet to the residential property. The tenant testified that since there is no claim by the landlord over any damages caused by a pet to the property, and the landlord didn’t return the deposit within 15 days of receiving the tenant’s forwarding address is writing, the landlord owes the tenant double the pet damage deposit.

Analysis

Electricity and Castanet Bills

The tenancy agreement clearly sets out that electricity is not included in the rent. The tenant testified that she was aware that electricity was not included in rent. The tenant testified that she lived at the rental unit in question for the dates stated on the electricity bill. The tenant's incorrect understanding of the state of her bills does not remove her responsibility to pay them. I find that the tenant is liable for the electricity bill in question in the amount of $93.58.

The landlord supplied into evidence copies of advertisements for the rental unit in question as well as her banking records showing payments to Castanet. The landlord testified that the Castanet payments from her account were solely for advertising the rental unit in question. I accept the landlord's testimony. I find that based on the testimony of the landlord and the evidence submitted, that the landlord incurred an expense of $73.50 in adverting costs from Castanet to re-rent the unit. Since the tenant broke the tenancy early, requiring the landlord to incur these advertising costs, I find that, pursuant to section 7 of the *Act,* the tenant is liable for them.

Loss of Rental Income

Under section 7 of the *Act* a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Pursuant to Policy Guideline 3, damage awards are meant 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. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired

term of the tenancy. In all cases the landlord’s claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

Pursuant to Policy Guideline 5, where the tenant breaches a term of the tenancy agreement, the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. Efforts to minimize the loss must be "reasonable" in the circumstances. **The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.**

In this case, pursuant to section 7 of the *Act* and Policy Guidelines 16 and 3, the landlord is entitled to recover lost rent from the tenant from the day after the tenant moved out, that being December 1, 2017, up to the earliest time that the tenant could legally have ended the tenancy, that being June 30, 2018.

While the landlord has a right to claim these damages, this right is subject to the duty to mitigate. The landlord was obligated to take reasonable steps to keep the loss as low as reasonably possible. In this case, the landlord posted the rental property prior to receiving written notice ending the tenancy and continually re-posted the advertisement and utilized different rental websites. In addition, the landlord continuously dropped the rent on the property until a renter was found. I find that the steps taken by the landlord to rent out the property were reasonable in the circumstances and that the landlord mitigated her loss by quickly advertising the property for rent and reducing the price when renters were not responding to the higher rental rates. While the landlord did not advertise in absolutely every forum available, as per Policy Guideline 5, she was not obligated to.

I further find the tenant's assertion that the landlord was only trying to rent to family or friends to be completely unfounded. The landlord submitted into evidence several advertisements placed in public forums and testified that the successful tenant for December 15, 2017, replied to the Castanet advertisement. The chat message from June 2017 submitted by the tenant has no bearing on the actions of the landlord between October and December 2017. The landlord clearly took greater steps to rent out the unit for December 1st, 2017 than she did for June 2017.

I also find that the listings provided by the tenant as to the going rate of similar properties to be unhelpful as they were from a markedly different time of year and do not indicate what the properties were actually rented out for. The tenant did not submit any evidence regarding what similar units in the same neighborhood as the rental property in question, rented out for in December 2017.

I find that the tenant is liable for lost rent from December 1, 2017- December 14, 2017 as follows:

$2,500.00/ 31 (days in December) = $80.65 * 14 (days unit vacant) = **$1,129.10**

I find that the tenant is liable for decreased rent from December 15, 2017 – December 31, 2017 as follows:

$2,500/31 (days in December) = $80.65 * 17 (days rented by new tenant)= $1,371.05

$2,350/31 (days in December) = $75.81 * 17 (days rented by new tenant) = $1,288.77
$1,371.05 - $1,288.77 = **$82.28**

In total, I find that the tenant owes the landlord as follows: $1,129.10 + $82.28 = **$1,211.38**, for lost rent from December 1 -14, 2017 and decreased rent from December 15- 31, 2017.

I find that the tenant is required to compensate the landlord for the difference between what she would have received from the defaulting tenant, $2,500.00 per month and what the landlord was able to re-rent the premises for, $2,350.00 per month, for the balance of the un-expired term of the tenancy, that being until June 2018. I find that the tenant owes the landlord $150.00 per month from January to June 2018 in the amount of $900.00.

Security Deposit and Pet Damage Deposit

Section 38(1) of the Act requires the landlord to either return the tenant's security deposit and pet damage deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenant to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings based on the testimony of both parties. The tenancy ended on November 30, 2017. The tenant provided the landlord with her forwarding address in writing on December 1, 2017 via text message. While this does not conform with the service requirements set out in section 88 of the *Act*, I find the forwarding address is sufficiently served pursuant to section 71(2) of the *Act* because the landlord acknowledged receiving the text message. On December 13, 2018, within 15 days of receiving the tenant's forwarding address in writing, the landlord made an application for dispute resolution to claim against the security deposit and pet damage deposit.

In order for the doubling provision in section 38(6) of the *Act* to be triggered, section 38(1) of the *Act* must be breached. In this case, section 38(1) of the *Act* was not

breached as the landlord made an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing.

While a pet damage deposit is supposed to be for damages caused by a pet, section 72 of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

As the landlord was successful in her application, I find that she is entitled to recover the $100.00 filing fee from the tenant.

I find that the landlord is entitled to retain $2,378.46 from the tenant's security deposit and pet damage deposit as follows:

Item	Amount
Electricity Bill- September to November 2017	$93.58
Advertising fees	$73.50
Loss of December 2017 rent	$1,211.38
Loss of January – June 2018 rent	$ 900.00
Filing Fee	$100.00
SUBTOTAL	**$2,378.46**
Less security deposit	- $1,250.00
Less pet damage deposit	- $1,250.00
TOTAL	**$ -121.54**

I find that the landlord must return to the tenant $121.54, as per the above table.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of $121.54 against the landlord. The tenant is provided with a monetary order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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 03, 2018

Residential Tenancy Branch