



Dispute Resolution Services

Page: 1

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 money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's 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 tenant 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.

The landlord testified that she posted a copy of her dispute resolution hearing package on the tenant's door on May 26, 2018. Although this is not one of the ways allowed by section 89(1) of the *Act* that an applicant can notify a respondent of an application for a monetary award, the tenant nevertheless confirmed that she received the landlord's dispute resolution hearing package and written evidence posted on her door in late May 2018. Pursuant to paragraph 71(2)(c) of the *Act*, I find that even though the landlord's dispute resolution hearing package was not served to the tenant in accordance with section 89 of the *Act*, the package was sufficiently given or served for the purposes of the *Act*. The landlord's written evidence was served to the tenant in accordance with section 88 of the *Act*.

The landlord confirmed that she received the tenant's written evidence sent by the tenant to the landlord by registered mail on July 3, 2018. While the tenant said that she entered this information, primarily comprising a timeline of events into the Residential Tenancy Branch's (the RTB's) service portal, this information was not entered on the RTB's service portal, nor was it available to me. I asked the tenant to read into sworn testimony the contents of any important elements of the tenant's written evidence, which I find was properly served to the landlord in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for 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 tenant?

Background and Evidence

On August 30 and 31, 2017, the parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) for a suite in a strata property. This Agreement was to run from September 30, 2017 until September 30, 2018. Monthly rent is set at \$1,550.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$775.00 security deposit, paid on August 31, 2017.

The tenant gave undisputed sworn testimony from the timeline she entered into written evidence and provided to the landlord that she contacted the landlord in February 2018 to advise that her circumstances had changed with respect to the training program she was taking. The tenant informed the landlord that she was having difficulty paying her monthly rent, would likely have to seek employment elsewhere, and asked the landlord if it would be alright if the tenant tried to sublet her rental suite to someone else. Although the landlord informed the tenant that the rules of the strata council prevented subleases, the tenant nevertheless had to look for employment elsewhere. The landlord subsequently received notification from the tenant in the tenant's letter of April 27, 2018, that the tenant was planning to vacate the rental unit by May 31, 2018. The parties agreed that the tenant paid her rent in full for May 2018, but has not paid any rent for any succeeding month. The parties agreed that the tenant surrendered vacant possession of the rental unit to the landlord on May 29, 2018. The tenant now resides in another province.

On May 15, 2018, before the tenant vacated the rental unit, the landlord applied for a monetary award of \$6,200.00. In her application, the landlord requested a monetary award equal to the full value of the remaining rent that would become due for the final four months of this fixed term tenancy. At that time, I note that no rent was then owing.

In the landlord's application for dispute resolution and at the hearing, the landlord maintained that the strata council where the rental unit is located has a policy limiting the total number of rental units within the building to 8 units. The landlord testified that she had to wait a year and a half when she first rented this strata unit to the tenant as others within the complex were on the waiting list before her. The landlord testified that she notified the strata that the tenant had vacated the rental unit and has been placed on the strata's waiting list for the next opportunity to rent the unit to someone else. The landlord maintained that she has no possibility of re-renting the rental unit, either as a short-term sublet or on a longer term basis before this tenancy is scheduled to end on September 30, 2018.

The tenant provided her forwarding address to the landlord for the return of her security deposit in the April 27, 2018 letter. The landlord's application to retain the security deposit was submitted on May 15, 2018, even before this tenancy had ended, so the landlord is within the 15 day time period for requesting authorization to retain the tenant's security deposit allowed under section 38 of the *Act*.

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. In this case, the onus is on the landlord to prove on the balance of probabilities that they are entitled to a monetary award for losses arising out of this tenancy.

In the landlord's May 14, 2018 letter to the tenant in which the landlord asked for full reimbursement of \$6,200.00 for the remaining four months of this fixed term tenancy, the landlord included the wording of section 7(1) of the *Act*. 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.

In this regard, there is no dispute that the tenant has ended her tenancy early and contravened the terms of her one-year fixed term tenancy agreement. I find that the tenant was in breach of their Agreement because she vacated the rental premises prior to the September 30, 2018 date specified in that Agreement. As such, the landlord is entitled to compensation for losses she incurred as a result of the tenant's failure to comply with the terms of their Agreement and the *Act*.

There is undisputed evidence that the tenant has not paid any rent for either June or July 2018, the two months when rent would have become due had she remained in this tenancy. As rent was not even due yet at the time of the landlord's application, the landlord's May 15, 2018 application was premature to the extent that it sought a monetary award, which if granted would have required the tenant to make payments in advance of the terms specified in the Agreement. In addition, I note that as of the date of this hearing, fully one-half of the landlord's request for a monetary award was for months where rent would still not have become owing according to the terms of the Agreement. Despite such deficiencies, the landlord asserted that she was entitled to this award because she was bound by her strata council's rules, which prevented her from obtaining a new tenant to replace the income she would be losing as a result of the tenant having vacated the rental unit before the end of her fixed term.

At the hearing, I advised the parties that 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* pursuant to section 7(1) of the *Act* to do whatever is reasonable to minimize that loss. This usually requires a landlord to demonstrate that adequate and reasonable measures have been taken to try to re-rent the premises to other tenants.

In this case, according to the landlord's sworn testimony, it would seem that the landlord may very well have prevented any mitigation of the tenant's exposure to her lost rent for this fixed term tenancy by having approached the strata council to advise that the tenant had vacated the rental premises.

Although the landlord asserted that the strata council's rules prevent her from either sub-letting the premises or seeking a new tenant during the remaining portion of this tenancy, I find that the landlord produced no written evidence other than her own assertion in her application for dispute resolution that this was so. She provided nothing from the strata council to support her assertion that she was effectively prevented from finding anyone to take over the remaining months of this tenancy. The landlord also provided no written evidence to corroborate that there was a waiting list for potential new rentals within this complex and that she had placed her name on that list. Since this was the landlord's application, the landlord bears the burden of proving her assertions in this regard.

Under these circumstances, I find that the landlord has failed to demonstrate that she has taken adequate measures to mitigate the tenant's exposure to the landlord's losses. As the landlord has not met the requirements of section 7(2) of the *Act*, I dismiss the landlord's claim for a monetary award equivalent to the value of the remaining four months of this Agreement.

As the landlord's application for a monetary award has been dismissed, I order the landlord to return the tenant's security deposit of \$775.00 to the tenant as soon as possible and within 15 days of receiving this decision.

As the landlord has been unsuccessful in this application, the landlord is not entitled to recover her filing fee from the tenant.

Conclusion

The landlord's application for a monetary award for loss of rent is dismissed without leave to reapply.

I order the landlord to return the tenant's \$775.00 security deposit forthwith. In the event that this does not occur, I issue a monetary Order in the tenant's favour to be used only in the event that the landlord does not abide by the Order to return the security deposit to the tenant. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order in the event that the landlord does not comply with this Order. Should the landlord

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: July 16, 2018

Residential Tenancy Branch