



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

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

One of the Landlords was present for the duration of the teleconference hearing, while no one called in for the Tenant during the approximately 23-minute hearing. As the Tenant was not present, service of the Notice of Dispute Resolution Proceeding (the “Notice of Hearing”) was addressed.

The Landlord provided affirmed testimony that the Notice of Hearing along with the Landlord’s evidence package was served to the Tenant in person. The Landlord testified that the Tenant had not provided his forwarding address and therefore they served him in person at his place of work. The Landlord confirmed that the Tenant was served personally; the package was not left with anyone else at his place of employment. I accept the undisputed testimony of the Landlord that the Tenant was duly served in accordance with Section 59(3) of the *Act*.

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.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for this Application for Dispute Resolution?

Background and Evidence

The Landlord provided affirmed and undisputed testimony regarding the tenancy. The tenancy began on June 1, 2017 and was for a fixed term of one year, set to end on May 31, 2018. Monthly rent in the amount of \$1,100.00 was due on the first day of each month. A security deposit in the amount of \$550.00 was paid at the outset of the tenancy.

The Landlord testified that they notified the Tenant of their plans to sell the rental unit soon. They provided the option sell to someone who intended to become the landlord for the Tenant and also the option to sell the rental unit to the Tenant who had previously indicted interest. When the Tenant declined to purchase the property, he also notified that Landlord that he intended to vacate the rental unit at the end of the fixed term, on May 31, 2018.

The Landlord stated that after the Tenant advised them that he would not be continuing the tenancy, they ensured that a potential sale would not take effect until after the end of the fixed term tenancy.

The Landlord submitted the email exchange with the Tenant and an email from the Tenant dated April 2, 2018 states that he will not be renewing his lease.

The Landlord stated that they arranged an open house and also showings of the property around the schedule of the Tenant. During the open house, while the Tenant was away, they discovered damage from cigarette smoke and cigarette butts in the unit. They advised the Tenant of the damage and the Landlord stated that he denied any damage to the unit.

The Landlord attended an inspection in the rental unit on or around April 28, 2018 with a potential buyer for the property. It was at this time that they found out the Tenant had already vacated the unit.

The Landlord stated that as the Tenant had confirmed he would vacate at the end of the fixed term, and had not provided notice to vacate earlier, they assumed he would still

pay rent for May 2018. As such, they deposited his post-dated cheque for May 2018 rent and the cheque was returned from the bank due to a stop payment that had been placed on it. Therefore, the Landlord is claiming compensation for rent for May 2018 in the amount of \$1,100.00.

The Landlord stated that they did not complete a Condition Inspection Report with the Tenant since he vacated the unit without notice and they were also not provided with his forwarding address. The Landlord testified that they are retaining the security deposit from the Tenant for the cost of repairs in the unit due to damage caused during the tenancy and therefore not asking to keep the security deposit towards the loss of rental income.

Analysis

Based on the undisputed testimony of the Landlord, I find as follows:

I accept the tenancy agreement submitted into evidence that shows a fixed term set to end on May 31, 2018. I refer to Section 45(2)(b) of the *Act*, which states that a fixed term tenancy cannot be ended prior to the date stated in the tenancy agreement.

Section 45(3) of the *Act* allows a fixed term tenancy to be ended if the landlord has breached a material term of the tenancy. However, I find no evidence before me that the tenancy was ended due to a breach, or that the Landlord was provided written notice and reasonable time to deal with the concerns.

I find the emails submitted by the Landlord evidence of the arrangement between the Landlord and the Tenant for the Tenant to vacate on May 31, 2018. I also find that no notice was provided that he would be vacating the rental unit in April 2018, prior to the end of the fixed term.

Pursuant to Section 7(1) of the *Act*, if a party is not in compliance with the *Act*, they must compensate the other party for any losses that occur. As the Landlord was expecting to have the unit rented through to May 31, 2018, I find that they experienced a loss of rental income for one month due to the Tenant leaving a fixed term tenancy early. Therefore, I find that the Tenant is responsible to compensate the Landlord for rent for May 2018 in the amount of \$1,100.00.

Section 7(2) of the *Act* states that the party claiming a loss must do what they can to minimize their losses. However, the Tenant did not notify the Landlord that they were

vacating early and they did not find out until on or around April 28, 2018. The Landlord had also advised the Tenant that the sale of the rental unit would be closing after the tenancy was set to end at the end of May 2018. As such, I find that they were not able to take steps to minimize their loss by trying to re-rent the unit in May 2018.

As the Landlord was successful in their application, I award them the recovery of the filing fee paid for this application in the amount of \$100.00 pursuant to Section 72 of the *Act*. A Monetary Order will be issued to the Landlord in the amount of \$1,200.00.

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,200.00** for rent owed for May 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 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 *Residential Tenancy Act*.

Dated: July 20, 2018

Residential Tenancy Branch