



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking compensation for loss or other money owed.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), and the Tenant, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documentary evidence.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Issue(s) to be Decided

Is the Landlord entitled to compensation for loss or other money owed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The parties agreed in the hearing that the fixed-term tenancy began on January 15, 2017, and that although it was originally set to end on July 31, 2017, the end of the fixed term was extended by mutual agreement, in writing, to January 31, 2018. The parties also agreed that rent in the amount of \$1,000.00 was due on the first day of each month. The tenancy agreement and addendum in the documentary evidence before me supports the testimony provided by the parties in the hearing.

The parties agreed that written notice to end the fixed-term tenancy effective November 6, 2017, was provided to the Landlord by the Tenant on approximately October 7, 2018. Although the Tenant and the Agent agreed that the Tenant vacated the rental unit and returned the keys on November 2, 2017, the parties also agreed that a condition inspection was not completed until November 16, 2017.

Although the Tenant agreed that she owes \$1,000.00 in rent for November 2017, as she remained in possession of the rental unit after the 1st day of the month, the parties disagreed about whether additional compensation is owed to the Landlord for December 2017 or January 2018.

The Agent testified that the Tenant had a fixed-term tenancy until January 31, 2018, and that she is therefore responsible for the loss of rent suffered by the Landlord for the balance of the fixed term. The Agent stated that as no rent was paid for November or December, the Tenant owes \$1,000.00 per month for each of those months. The Agent stated that the Landlord is only seeking \$289.00 for January as a new Tenant took possession of the rental unit on January 11, 2018, and paid pro-rated rent in the amount of \$711.00 for the month of January.

The Agent stated that as soon as the walk-through was complete, the suite was offered to potential renters who visited or inquired about the property. The Agent stated that they did not advertise the suite individually, as there are 4-5 vacancies on average in the building at any given time, and instead their vacancies are advertised generally as the types of suites available on both their own website and several commonly used rental sites. The Agent states that since November 16, 2017, four potential tenants viewed the property, that the first three opted to rent suites with different features, and that the fourth one finally rented the Tenant's previous rental unit. When asked, the Agent acknowledged that the price of the rental unit was never reduced.

The Tenant disputed that she owes the Landlord \$1,000.00 for December or \$289.00 for January as the Landlord knew she would be vacating the rental unit since early October. While the Tenant conceded that the Landlord may be entitled to \$500.00 for the first half of December, she stated that she should not have to pay for the second half of December or any portion of January as the Landlord should have been able to rent it much sooner. In support of her testimony that the unit should have been rented sooner, the Tenant stated that she was able to immediately find new accommodation.

Analysis

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further to this, it states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or the tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 45 of the *Act* states that a tenant may end a fixed term tenancy by giving the landlord written notice to end the tenancy effective on a date that is:

- not earlier than one month after the date the landlord receives the notice;
- not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45 also states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Section 45.1 states that a tenant is eligible to end a fixed term tenancy under this section if a statement is made in accordance with section 45.2 [*confirmation of eligibility*] confirming one of the following:

- (a) if the tenant remains in the rental unit, the safety or security of either the tenant or a dependent of the tenant who lives in the rental unit is or is likely at risk from family violence carried out by a family member of the tenant;
- (b) the tenant has been assessed as requiring long-term care;
- (c) the tenant has been admitted to a long-term care facility.

Neither party provided any testimony in relation to a breach of a material term or section 45.1 of the *Act*. As a result, I find that the earliest date that the Tenant could lawfully have ended the tenancy without the Landlord's consent was January 31, 2018. Based on the above and the testimony and documentary evidence provided by the parties for my consideration, I therefore find that the Tenant breached the fixed-term tenancy when she unilaterally ended the tenancy prior to the end of the fixed term. Having made this finding I will now turn my mind to the matter of compensation sought by the Landlord.

Both parties agreed that rent in the amount of \$1,000.00 is owed for November, 2017; however, the parties disagreed about what amounts, if any, are owed for December of 2017, and January of 2018. Residential Tenancy Policy Guideline # 3 and # 16 state that the purpose of compensation is to place the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. In the hearing, the Agent therefore sought \$2,289.00, which is the difference between the amount of rent that would have been received had the Tenant not breached the tenancy agreement by unilaterally ending the tenancy early, and the amount actually received by the new occupant for the balance of the fixed term.

However, the Agent acknowledged in the hearing that the unit was not shown or advertised to prospective tenants until after November 16, 2017, that the unit was not posted individually for rent, and that no price reductions were made. Section 7 of the *Act* requires that parties who are seeking compensation for loss do whatever is reasonable to minimize the damage or loss. Policy Guideline #5 states that an applicant will not be entitled to recover compensation for loss that could reasonably have been avoided and that the duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Further to this it states that if the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

While I acknowledge that the Landlord made some efforts to have the unit re-rented, I find that the Landlord failed to do whatever was reasonable in order to mitigate their loss when they failed to advertise the rental unit immediately upon receiving the Tenant's notice, when they failed to advertise it individually, and when they failed to reduce the rental price at any point while the rental unit remained vacant. In my mind, the Landlord significantly reduced the likelihood that the unit would be re-rented before the end of the fixed-term by failing to do so. Based on this finding and on my previous findings above, I therefore find that the Landlord is not entitled to the full \$2,289.00

sought. Pursuant to Policy Guideline #5, I find that \$1,700.00 is a more reasonable amount owed to the Landlord for loss of rent, given the Landlord's failure to advertise the unit fully and immediately, and their failure to reduce the rent at any point while the unit was vacant.

Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to the recovery of the \$100.00 filing fee. As a result, the Landlord is therefore entitled to a Monetary Order in the amount of \$1,800.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,800.00. 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: August 10, 2018

Residential Tenancy Branch