



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: FFL, MNRL-S

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$4950 for loss of rent.
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing filed by the landlord on April 29, 2018 was sufficiently served on the Tenants by registered mail shortly thereafter. The Tenants acknowledged service of the documents.

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on March 1, 2018 and end on February 28, 2018. The tenancy agreement provided that the tenant(s) would pay rent of \$2475 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$1237.50 and a pet damage deposit of \$500 at the start of the tenancy.

On November 21, 2017 the tenants gave the landlord written notice they were ending the tenancy at the end of December. The tenants also signed a document dated November 21, 2017 that was entitled Acknowledgement of Early End of Tenancy Notice in which the tenants acknowledged they were responsible to pay the rent until the end of February 2018 if the landlord was not able to find a new tenant. The document also included the Tenant's forwarding address.

The tenancy ended at the end of December. The parties conducted a Move-out Inspection on December 29, 2017.

The landlord testified that despite their best efforts to re-rent the rental unit they were not able to find a new tenant for January and February. Eventually the rental property was sold in April 2018.

The representative of the landlord is the owner of property. She provided a summary of the efforts of the real estate company to re-rent the rental unit as follows: The real estate agent did not appear at the hearing or provide an affidavit of her efforts.

- They began advertising on December 11, 2017. Prospective tenants started the application before viewing but did not proceed to submit the application on December 11, 2107, December 14, 2018 and December 18, 2018. Another prospective tenant submitted the application. A prospective tenant viewed the property on December 21, 2017.
- From January 1, 2018 to February 28, 2018 the landlord conducted three showing, had 7 different parties e-mail regarding the Act, 8 calls resulting from the posters posted around the neighborhood and 6 calls result from the Craigslist advertisement. The summary states the Ads were refreshed on February 8, 2018 and February 28, 2018.
- The landlord testified it is very difficult to find a tenant at that time of the year.

The tenants gave the following evidence:

- They questioned whether the landlord properly mitigated their loss by acting reasonably to find another tenant. In particular they submitted the following is unreasonable:
 - The landlord was given Notice they were ending the tenancy on November 21, 2018. The landlord did not start advertising until December 12, 2017 which is 21 days after being given the Notice.
- On December 18, 2018 the tenant sent an e-mail to the agent asking where she was advertising as the vacancy rate was less that 1%.
- The Condition Move-Out Inspection Report was completed on December 29, 2017 and no damage was identified.
- The tenants put a stop payment on their rent cheques for January 2018 and February 2018. The landlord attempted to cash them contrary to section 11 of the lease.

- On January 3, 2018 the Tenants sent an e-mail to the landlord suggesting that the rent be lowered. The rent was not lowered until the end of February (after the tenancy had come to an end). .
- The landlord failed to return the security deposit and pet damage deposit. The tenancy ended on December 31, 2018. The tenant's forwarding address was first provided on November 21, 2018 and also as part of the Condition Move-Out Inspection. The parties have not agreed in writing that the landlord can keep the security deposit/pet damage deposit. The landlord failed to file a claim seeking to keep the security deposit and pet damage deposit within 15 days of the later of the end of tenancy or the date the landlord received the Tenants' forwarding address in writing. The landlord does not have a monetary order against them. The tenants submit they are entitled to double the security deposit and pet damage deposit.

Analysis:

The Tenants are responsible to pay the rent for the unexpired portion of the fixed term subject to the landlord's obligation to mitigate.

Section 7(2) of the Act provides as follows:

Liability for not complying with this Act or a tenancy agreement

7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline #5 includes the following:

"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. The landlord or tenant entitled to contract for repairs as a result of a breach by the other party, may choose to pay a service charge that exceeds what one would reasonably be required to pay for the service in the circumstances. In that case, the arbitrator may award a reduced claim based on the reasonable cost of the service. If partial mitigation occurs, the arbitrator may apportion the claim to cover the period during which mitigation occurred. **The landlord who does not advertise for a new tenant within a reasonable time after the tenant vacates a rental unit or site prior to the expiry of a fixed term lease may not be entitled to claim loss of rent for the first month of vacancy; (my emphasis)**" however, claims for loss of rent for subsequent months may be successful once efforts to find a new tenant are made.

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Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at **a reasonably economic rent**. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent. Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable.

After carefully considering all of the evidence I determined the landlord is entitled to 1 ½ months of lost rent for the following reasons:

- I determined the obligation to mitigate where a tenant breaches a fixed term tenancy agreement starts as set out in Policy Guideline #5 within a reasonable time after the tenant vacates the rental unit prior to the expiry of a fixed term lease.
- I do not accept the submission of the Tenant that the landlord failed to mitigate but failing to advertise prior to December 12, 2017.
- I am satisfied reasonable efforts were made to advertise the rental unit during the first half of January 2018. It is not reasonable to expect that a landlord will find a Tenant who can take possession immediately after entering into a tenancy agreement.
- I have also considered there is added difficulty in attempting to rent a rental unit in January 2018.
- However, I accept the submission of the Tenants that the landlords failed to act reasonably in failing to reduce the rent after there was insufficient interest by prospective tenants in the rental property in the first half of January. I determined this is not acting reasonably to lessen the landlord's loss.
- A summary of the efforts to re-rent to property was presented by the landlord. However, the agent who was involved in this attempt did not give evidence at the hearing. The landlord failed to prove that the efforts to mitigate were sufficient to warrant a monetary order for the full two months.

In summary I determined the landlord has established a claim against the tenant for loss of rent for 1 ½ months or the sum of \$3712.50. I determined based on the evidence presented before me that had the landlord properly mitigated its loss the rental unit could have been re-rented for the middle of February.

I determined the landlord has established a claim against the Tenants in the sum of \$3712.50 plus \$100 for the cost of the filing fee for a total of \$3812.50.

The Application for Dispute Resolution filed by the landlord seeks an order to retain the security deposit and pet damage deposit.

Security Deposit and Pet Damage Deposit:

Policy Guideline 17 provides that a arbitrator can consider a tenant's claim for the doubling of the security deposit/pet damage deposit where a landlord has applied to retain the security deposit and pet damage deposit even though the tenants have not filed by Application for Dispute Resolution.

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of \$1237.50 and a pet damage deposit of \$500 for a total of \$1737.50 at the start of the tenancy. I determined the tenancy ended on December 31, 2017. I further determined the tenants provided the landlord with their forwarding address in writing on July 31, 2016. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenants have established a claim against the landlord for double the security deposit and pet damage deposit for a total of \$3475.

Conclusion

In summary I determined the landlord has established a claim against the Tenants in the sum of \$3812.50. I determined the Tenants are entitled to the return of double the security deposit/pet damage deposit which totals \$3475. After setting off one claim against that of the other I ordered that the Tenants pay to the landlord the sum of \$337.50. The landlord is entitled to retain the security deposit and pet damage deposit.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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 13, 2018

Residential Tenancy Branch