



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VEYRON PROPERTIES GROUP LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “*Act*”), for a monetary order for damages or compensation for losses under the *Act*, permission to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

Both parties attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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 monetary compensation for damages under the *Act*?
- Is the Landlord entitled to the return of their filing fee for this application?

Background and Evidence

Both parties agreed that the tenancy began on July 1, 2017. Rent in the amount of \$1,092.00 was payable on the first day of each month, and the Tenant paid a security deposit of \$512.50 at the outset of this tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

Both the parties agreed that the Tenants gave their notice to end their tenancy to the Landlord on May 3, 2018. The Landlord provided a copy of the Tenant's written notice into documentary evidence.

The Landlord testified that they had a waitlist of people who wanted the rental unit and that a person was selected off that list and offered the rental unit. The Landlord testified that even though they had a new person to take over the rental unit, they were not able to rent the unit for June 2018, as the new person had to give proper notice where they were living, and the earliest they could move into this rental unit was July 1, 2018. The Landlord is requesting \$1,092.00 for the recovery for the lost rental income for June 2018, due to the late notice of the Tenant.

The Landlord testified that the Tenant had paid the bill for cleaning the carpets in the rental unit and that they were no longer seeking the \$140.00 requested in their application for that bill.

The Landlord testified that they are seeking \$35.00 in NSF fees due to the Tenant's June rent payment coming back NSF.

The Tenant testified that she should not be responsible for the NSF fee as she had not given the Landlord permission to attempt a direct debit from her bank account after she moved out.

The Tenant also testified that she knew of several people who were on the waitlist for her rental unit that could have moved in for June 1, 2018. The Tenant testified that she should not be responsible for the June rent as it was the Landlord's choice to wait for a specific person to take over her rental unit for July 1, 2018.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement or, in a month to month tenancy, without giving at least one clear rental periods notice.

Tenant's notice

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is 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.

I find that this was a month to month tenancy and that the Tenants' Notice to end the tenancy, dated May 3, 2018, could not have ended the tenancy, in accordance with the *Act*, before June 30, 2018. I find that the Tenants failed to comply with the *Act* when they issued notice to the Landlord to end the tenancy as of May 31, 2018.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find that the Tenants breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord and that the Landlord has provided sufficient verbal testimony to prove the value of that loss. However, I find that the Landlord did not act reasonably to minimize the damages or losses due to the Tenants' breach, when they offered the rental unit to the new renter who could not take over the rental unit until July 1, 2018. I find that the Landlord did not attempt to try and re-rent the rental unit for June

2018 as required. Therefore, I dismiss the Landlord's claim for the recovery of the loss of rental income for the month of June 2018.

As I find that the Landlord was not entitled to the recovery of the rental income for June 2018, I also find that the Landlord is not entitled to the NSF charge due to their failed attempt to direct debit the Tenant's account. Therefore, I dismiss the Landlord's claim for compensation of \$35.00 in NSF fee for June 2018.

As the Landlord was not successful in his application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for his application.

I order the Landlord to return the security deposit that he is holding for this tenancy to the Tenants within 15 days of receiving this decision.

Conclusion

The Landlord's application is dismissed, without leave to reapply.

I order the Landlord to return the Tenants' security deposits to the Tenants within 15 days of receiving this decision.

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: September 7, 2018

Residential Tenancy Branch