



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that the tenants were individually served the notice of dispute resolution packages by registered mail on March 12, 2018. The landlord provided the Canada Post Tracking Numbers to confirm these registered mailings. The tenants confirmed receipt of the dispute resolution packages but did not know on what date. I find that the tenants were deemed served with these packages on March 17, 2018, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?

3. Is the landlord entitled to retain the tenants' security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This fixed term tenancy began on May 1, 2017 and was set to end on April 30, 2018; however, the tenants vacated the subject rental property on January 30, 2018. A previous one-year fixed term tenancy was entered into between May 1, 2016 and April 30, 2017. Monthly rent in the amount of \$2,022.00 was payable on the first day of each month. A security deposit of \$975.00 was paid by the tenants to the landlord. The tenancy agreement has a liquidated damages clause which states that if the tenants end the tenancy prior to the end of the fixed term, the tenants are required to pay \$1,011.00 as a pre-estimate of the landlord's administrative costs of advertising and re-renting the subject rental property. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed to the following facts. A move in inspection and condition inspection report were completed on May 1, 2016 by both parties. A move out inspection and condition inspection report were completed on January 30, 2018 by both parties. The landlord provided the tenants with copies of both the move in and move out condition inspection reports. The move in and move out condition inspection reports were entered into evidence.

Both parties agreed to the following facts. On November 15, 2018 the tenants e-mailed the landlord with their notice to end tenancy effective January 30, 2018. The landlord testified that the tenants' notice to end tenancy was received on November 15, 2018. On February 25, 2018 the tenants e-mailed the landlord their forwarding address in writing. The landlord testified that the tenants' forwarding address was received on February 26, 2018. The landlord applied for dispute resolution on March 9, 2018.

The landlord testified that on November 16, 2018 advertisements listing the subject rental property for rent at the amount of \$2,300.00 per month were posted on the landlord's internal website as well as on Craigslist. The landlord testified that the advertisement on the internal website did not need to be refreshed and that someone at her office refreshed the Craigslist advertisement twice per month. The landlord testified that a new lease for the subject rental property was signed on February 6, 2018 starting February 15, 2018 at a rental rate of \$2,300.00.

The tenants testified that they don't believe that the landlord did enough to rent out the subject rental property and that the landlord should have been able to find a renter for February 1, 2018 considering that they gave the landlord nearly 11 weeks' notice.

Both parties agreed to the following facts. The tenants did not cancel their pre-authorized debit and on February 1, 2018, \$2,022.00 was debited from the tenants' account with \$872.00 of that being applied to rent for February 1-14, 2018, and \$1,011.00 being applied against the liquidated damages charge with a credit owing to the tenants of \$139.00. The landlord's ledger was entered into evidence and confirms the above payments.

The landlord is seeking \$872.00 for rent from February 1-15, 2018 and liquidated damages in the amount of \$1,011.00. The tenants testified that they agree to pay the liquidated damages charge in the amount of \$1,011.00 but dispute the rent charge in the amount of \$872.00.

Analysis

Damages/compensation and the duty to mitigate

Under section 7 of the *Act* a landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act, the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

Policy Guideline 3 states that attempting to re-rent the premises at a greatly increased rent will not constitute mitigation. Pursuant to Policy Guideline 5, if I find that the party claiming damages has not minimized the loss, I may award a reduced claim that is adjusted for the amount that might have been saved.

In this case, the tenants ended a one-year fixed term tenancy early; thereby decreasing the rental income that the landlord was to receive under the tenancy agreement for the months of February, March, and April 2018. Pursuant to section 7, the tenants are required to compensate the landlord for that loss of rental income. However, the landlords also have a duty to minimize that loss of rental income by re-renting the unit at a reasonably economic rate as soon as possible. The landlord chose to attempt to rent the unit at a rate higher than specified in the tenancy agreement.

I find that in attempting to rent the property at a rate \$278.00 above the rate paid by the tenants, the landlord failed to mitigate her loss. Due to the landlord's failure to mitigate her loss, I find that she is not entitled to recover any rent for February 1-14, 2018. Since the landlord already received payment for February 1-14, 2018, I find that the tenants are entitled to recover the \$872.00 paid to the landlord for rent from February 1-14, 2018.

As the tenants agreed that they are responsible for the liquidated damages charge in the amount of \$1,011.00 I find that the landlord is entitled to that amount. However, since the landlord has already received \$1,011.00 from the tenants, I do not need to issue a Monetary Order in that amount to the landlord.

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38(a) and 38(b) of the *Act*. Upon review of the landlord's claim, I find that the landlord is required to return the tenants' entire deposit in the amount of \$975.00 as the landlord has already recovered the funds claimed in this application from the tenants.

In addition, I find that the landlord is obligated to return the sum of \$139.00 which is credited to the tenants' account for the overpayment debited from the tenants' account on February 1, 2018.

As the landlord was not successful in her application, I find that she is not entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

I issue a Monetary Order to the tenants under the following terms:

Item	Amount
February rent overpayment	\$872.00
Security Deposit	\$975.00
Credit on account	\$139.00
TOTAL	\$1,986.00

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: October 10, 2018

Residential Tenancy Branch