



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

- a monetary award for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord, the landlord's assistant and Tenant C.T. attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant C.T. (the tenant) indicated that they are representing the interests of both tenants in this matter.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The tenant acknowledged receipt of the Application for Dispute Resolution (the Application) and evidence which was personally served to them on March 17, 2018. In accordance with sections 88 and 89 of the *Act*, I find that the tenants are duly served with the Application and evidence.

The landlord acknowledged receipt of the tenants' evidence which was sent to them by mail on September 04, 2018. In accordance with section 88 of the *Act*, I find that the landlord is duly served with the tenants' evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenants' security deposit?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

A copy of a fixed term lease was provided by the landlord showing that this tenancy began on December 01, 2017, with fixed date of December 31, 2018, and a monthly rent of \$1,980.00 due on the first day of each month. The tenancy agreement shows a security deposit in the amount of \$990.00.

The landlord also provided in evidence:

- A copy of a notice to end tenancy from the tenants to the landlord dated February 20, 2018, with an effective date of March 27, 2018;
- A copy of an e-mail exchange dated March 17, 2018, in which the tenant states that the landlord has a duty to minimize the loss and the landlord states that they will make an application for dispute resolution for the April 2018 rent upon the tenant refusing to relinquish the security deposit in full satisfaction of the amount owing to the landlord for April 2018 rent; and
- A copy of a tenancy agreement with new occupants for the rental unit commencing on May 01, 2018.

The tenants provided in evidence;

- a copy of a timeline of events which states that the tenants gave notice to end the tenancy on February 20, 2018, after the landlord denied a mutual agreement. The tenants submit that the landlord indicated that they were going on vacation and would not be able to find another tenant for April 01, 2018, but would accept recommendations from the tenant. The timeline indicates the new occupants' contact information was provided to the landlord who stated that they would contact references on February 23, 2018;
- A series of e-mail exchanges between the landlord and the tenant regarding April 2018 rent and the efforts of the landlord to re-rent the rental unit.

The landlord testified that this tenancy ended when the tenant gave written notice on February 20, 2018, with an effective date of March 27, 2018. The landlord submitted that the tenant had a fixed term lease which did not expire until December 31, 2018.

The landlord stated that they were about to go on vacation when they received the notice from the tenant. The landlord testified that when they came back from vacation on March 02, 2018, they entered into a new agreement with acceptable occupants who were willing to take over the lease, but the occupants could only give notice to end their current tenancy effective as of May 01, 2018. The landlord stated that they suffered a loss of rental income for April 2018. The landlord submitted that they are seeking to recover a loss of rent for April 2018 and to recover the filing fee from the tenants.

The tenant testified that after giving written notice to the landlord on February 20, 2018, they advertised the rental unit that evening. The tenant stated that they found a few prospective occupants to view the rental unit as of February 21, 2018, but that the current occupant of the rental unit was only offered it on March 02, 2018. The tenant submitted that it was an unreasonable amount of time from when the landlord stated that they would contact the references on February 23, 2018, to when the landlord offered the rental unit to the new occupants on March 02, 2018.

The tenant stated that on March 07, 2018, the landlord informed them that they would be responsible for April 2018 rent and the tenant objected as they were confident that the landlord could still find someone to take over the rental unit effective as of April 01, 2018. The tenant submitted that the landlord did not make reasonable efforts to minimize the tenant's loss by finding an occupant to take over the rental unit for April 01, 2018.

Analysis

Section 38 of the *Act* establishes that within 15 days from the end of the tenancy the landlord must either repay the security deposit to the tenant or make an application for dispute resolution if they have received the forwarding address prior to the end of the tenancy. As the landlord made the Application on March 17, 2018, and the tenancy ended on March 31, 2018, pursuant to section 45 of the Act, I find that the landlord made their Application within 15 days of the end of the tenancy pursuant to section 38 of the *Act*.

Section 7 (1) of the *Act* states that if a landlord or tenant does not comply with this *Act*, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 7 (2) of the *Act* states that a landlord who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, *Regulations* or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Policy Guideline # 5 sets out the landlord and the tenant's duty to minimize loss and states that efforts to minimize loss must be "reasonable" in the circumstances. The guideline goes on to state that what is reasonable may vary depending on the factors involved and that the party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

I find that it is undisputed that the landlord and the tenant were entered into a fixed term tenancy agreement that was not set to expire until December 31, 2018. I further find that it is undisputed that the tenants sought to end the tenancy before the effective date on the agreement and both parties had a duty to minimize the loss; however I find that the landlord was not required to do everything possible to find a new occupant for the rental unit as of April 01, 2018.

Based on a balance of probabilities, I find that most prospective occupants would have to give proper notice to end their own tenancy prior to February 28, 2018, to commence a new tenancy on April 01, 2018. I find that the tenants' notice was given on February 20, 2018, which only gave the landlord until February 28, 2018, to find a new occupant to take over the lease. If the prospective occupant is not able to personally hand their notice to end tenancy to their landlord, deemed service provisions of the *Act* would apply and the tenant would have to allow for three days service if posting a notice to end tenancy on their landlord's door or leaving it in the landlord's mailbox. Alternatively, written notice would be deemed served five days after being mailed to their landlord in pursuant to section 90 of the *Act*.

I find that it is not reasonable, even if the landlord had not gone on vacation, for the landlord to interview prospective occupants, check their references and then make a decision which would allow the occupants to provide written notice to end their current tenancy effective as of April 01, 2018. The landlord had the prospective occupant's references as of February 23, 2018, and based on balance of probabilities, it could take at least a day or two for all the references to be contacted. I find that, even if the landlord had made a decision on February 25, 2018, which would already be an extremely expedited process from receiving the tenants' notice on February 20, 2018, the new occupants would still have to provide notice to their current landlord and there is no certainty that proper written notice could be received by that landlord to end their current tenancy prior to March 01, 2018 for an effective date of April 01, 2018.

I find that it is not reasonable for the tenant to expect the landlord to only accept a new occupant who was available for April 01, 2018, due to the time constraints involved with the timing of the tenant's notice. I find that it would increase the landlord's risks unreasonably to only accept a new occupant who is available for April 01, 2018, especially in March 2018 as this limits the pool of quality prospective occupants. I find that most occupants would have to give proper one month notice to end their tenancies and it is not reasonable for new occupants to pay rent at two residences in order to minimize the loss for the tenant and the landlord. I find that limiting the pool of prospective occupants in March 2018 to those who are desperate for a rental unit in April 01, 2018, is not minimizing the landlord's potential risk for loss.

In addition to the above, I find that it is not reasonable for the tenants to expect the landlord to adjust their plans for vacation to minimize the loss for April 2018. I find that the landlord acted in a reasonable manner and accepted a new occupant for the rental unit within 10 days of receiving the tenant's written notice. I find that it is reasonable for the landlord to want to properly vet their prospective occupants, and that they did so within a reasonable amount of time when they came back from vacation with the landlord offering the occupants the rental unit shortly after this meeting. I further find that the landlord tried to minimize the tenant's loss by offering to accept the security deposit, equal to a half month's rent, in full satisfaction of rent owing for April 2018, which the tenant rejected.

For the above reasons I find that the landlord has suffered a loss of rent for April 2018 due to the tenants giving notice to end their tenancy earlier than the effective date on the fixed term tenancy agreement. I further find that the landlord made reasonable efforts to minimize the tenants' loss, which they were successful at in accepting new occupants to take over the tenants' tenancy agreement from May 2018 until December 2018.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party

For the above reasons I find that the landlord has suffered a loss of rent for April 2018 and that the landlord is entitled to a monetary award in the amount of \$1,980.00 from the tenants.

Pursuant to section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in their application, they may recover the filing fee related to this application.

Conclusion

Pursuant to section 67 of the *Act*, I grant a Monetary Order in the landlord's favour under the following terms, which allows the landlord to recover lost rent for April 2018, to retain the tenants' security deposit and to recover the filing fee for this Application:

Item	Amount
April 2018 Unpaid Rent	\$1,980.00
Less Security Deposit	-990.00
Filing Fee for this Application	100.00
Total Monetary Order	\$1,090.00

The landlord is provided with a Monetary Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 24, 2018

Residential Tenancy Branch