



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 for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act") for a monetary order for unpaid rent or utilities, for authorization to retain the tenant's security deposit, and to recover the cost of the filing fee.

The landlord and tenant attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed receiving the documentary evidence of the landlord and that the evidence was reviewed prior to the hearing. The tenant also confirmed that they did not serve any documentary evidence on the landlord in response to the landlord's application. As a result, I find the tenant was served with the landlords' evidence in accordance with the *Act* and Residential Tenancy Branch Rules of Procedure.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on July 1, 2017 and was scheduled to end on June 30, 2018. Monthly rent in the amount of \$1,050.00 was due on the first day of each month. A security deposit of

\$525.00 was paid by the tenant at the start of the tenancy which the landlord continues to hold.

The landlord's monetary claim of \$1,050.00 is comprised of unpaid April 2018 rent. The tenant vacated the rental unit on April 1, 2018. The landlord is also seeking the recovery of the cost of the filing fee. The landlord testified that in mid-February 2018 the landlord received a text from the tenant which is dated February 19, 2018 and reads as follows:

"...I had a family emergency a few weeks ago which has led to me living with my grandma to take care of her. My grandpa has been put in a home and she can't be alone. That being said my grandma has asked that I move in with her to take care of her. I said I would have to talk to you as that would involve breaking my lease. I would be able to give notice and pay rent until you're able to find someone of course. I'm really sorry I love living here and this is the last thing I wanted to have to do, you guys are amazing landlords."

[Reproduced as written]

The landlord responded to the tenant's text on February 21, 2018 which reads in part:

"...Sorry I thought I had sent a message when you responded initially. I'm really sorry to hear that, I totally understand, family comes first. You have been great also, no complaints from us for sure. Thank you, I will put a posting up this morning to start advertising again, would you be OK with us giving access to prospects if they request To view it? Thanks..."

[Reproduced as written]

The tenant testified that she interpreted the response from the landlord as agreeing to release her from the obligations of her lease. The landlord denies that he was agreeing to release the tenancy from the obligations of her fixed-term tenancy agreement. The tenant referred to a letter she wrote to the landlord dated April 11, 2018 which reads in part:

"...On Monday, February 19th, I sent you a text message to let you know I would not be able to finish the remainder of my lease due to a family emergency. I explained in detail what the circumstances of my emergency were, and that I would be very appreciative if you could help me out in this regard. After not receiving a response, I followed through with another text message on Wednesday, February 21st. You responded quickly to this text stating that you

were ok with me breaking my lease and would post the place online right away, as you understood my situation...”

[Reproduced as written]

The landlord stated that he posted an ad on February 27, 2018 and that the monthly rent was the same amount being paid by the tenant, which is \$1,050.00. The landlord confirmed that in mid-March 2018, he updated the rental ad to indicate that the \$1,050.00 rent would remain that amount until July 2018 and would increase to \$1,300.00 effective July 1, 2018. The landlord stated that he was permitted to do so as the fixed term tenancy was ending June 30, 2018. The landlord stated that based on the February 27, 2018 rental ad, he had only one response which “did not go anywhere” and that eventually new tenants were secured who started their tenancy effective May 1, 2018.

The landlord is seeking \$1,050.00 for the loss of April 2018 rent due to the tenant breaching their fixed-term tenancy, plus the filing fee.

The parties confirmed during the hearing that they did not sign an agreement to release the tenant from the fixed-term tenancy.

Analysis

Based on the documentary evidence and the testimony of the parties provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

Claim for unpaid April 2018 rent – There is no dispute that April 2018 rent was not paid by the tenant. The tenant’s position is that based on the text dated February 21,

2018 from the landlord that the tenant was released from the obligations of her fixed term tenancy. I have reviewed the texts and April 11, 2018 and I disagree. I find that the text dated February 21, 2018 is simply an acknowledgement of the tenant's February 19, 2018 text and that the landlord understands why she has to break the lease but is not waiving his rights under the *Act*. Furthermore, I find the tenant's letter dated April 11, 2018 makes an incorrect assumption that the landlord was "ok" with her breaking her lease.

Section 45(2) of the *Act* applies and states:

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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service 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.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

[My emphasis added]

The parties confirmed that there was no agreement in writing to end the fixed term tenancy. Given the above, I find the tenant breached section 45(2) of the *Act* by vacating the rental unit before the fixed-term tenancy end date of June 30, 2018. I find there is insufficient evidence of a signed mutual agreement between the parties to end the tenancy early whereby the landlord would not be entitled to compensation.

Section 7 of the *Act*, requires that the landlord do what is reasonable to minimize their damage or loss, and I find that the landlord minimized their loss by securing a new

renter effective May 1, 2018. Therefore, I find the landlord has met the burden of proof and is entitled to **\$1,050.00** for unpaid April 2018 rent.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$100.00** filing fee pursuant to section 72 of the *Act*. As a result, I find the landlord has established a total monetary claim of **\$1,150.00** comprised of \$1,050.00 for unpaid April 2018 rent plus the \$100 filing fee.

Pursuant to section 38 of the *Act*, I authorize the landlord to retain the tenant's full security deposit of \$525.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of **\$625.00**.

Conclusion

The landlord's claim is fully successful.

The landlord has established a total monetary claim of \$1,150.00. The landlord has been authorized to retain the tenant's full security deposit of \$525.00 in partial satisfaction of the landlord's monetary claim.

The landlord is granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of \$625.00. The monetary order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The decision will be emailed to the parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: November 15, 2018

Residential Tenancy Branch