



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 award for unpaid rent and for compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 and the tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Tenant S.L. (the tenant) indicated that they would be the primary speaker for the tenants.

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

The landlord testified that the Application for Dispute Resolution (the Application) and evidence were sent to the tenants by way of Canada Post Registered Mail on or about April 14, 2018. The tenant confirmed receiving the landlord's evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with the Application and evidence.

The tenant testified that they attempted to personally serve the landlord but that the landlord refused service. The tenant submitted that they then sent the evidence by e-mail to the landlord shortly after the attempted service by hand.

The landlord submitted that the tenants had attempted to serve her at the place of her employment but that she does not carry on business as a landlord at that address. The

landlord confirmed that she received the evidence that was e-mailed to her but that she did not have a chance to review it.

I find that section 88 of the Act only allows for service to the address that the landlord carries on business as a landlord and that the tenants had the landlord's service address; however, I find that the tenants' evidence is an affidavit that mainly consists of references to e-mails previously exchanged with the landlord.

As the landlord confirmed that she did receive the evidence and I find that there is no documentary evidence or information in the submission that the landlord would not have previous familiarity with, I find that they are not prejudiced by its consideration. For this reason, I find that the landlord is duly served with the tenant's evidence in accordance with section 71 of the Act, which allows an arbitrator to find a document sufficiently served for the purposes of the Act.

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Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for compensation for damage or loss under the Act, regulation or tenancy agreement?

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 March 15, 2017, with a monthly rent of \$2,050.00 due on the 15th day of the month. The landlord and the tenant agreed that the fixed term tenancy was to end on March 15, 2018, but that the tenants were going to continue on a month to month tenancy. The landlord confirmed that they currently retain a security deposit in the amount of \$1,025.00.

The landlord also provided in evidence:

- A copy of a text message from the tenant to the landlord on March 06, 2018, indicating that the tenants are ending their tenancy and requesting the landlord to use the security deposit as final rent payment for March 15 to March 31, 2018;
- A copy of e-mail exchange between the landlord and the tenant on March 20, 2018, in which the landlord indicates that they are trying to find new tenants for the rental unit, that the landlord accepts the tenants' text on March 06, 2018, as formal written notice and that rent is due for March 15, 2018, to April 15, 2018. The landlord goes on to state that they do not accept the security deposit as payment of rent for the last month of the tenancy. The tenant responds on the

same day that they expect the landlord to honour the verbal agreement reached by phone on March 06, 2018, that the security deposit will be used for rent from March 15 to March 31, 2018, with no further rent payments expected;

The tenants provided in evidence a copy of an affidavit in which the tenants present a timeline of events and refer to the e-mails noted above in the landlord's evidence. In the affidavit the tenants submit that a verbal agreement was reached on March 06, 2018, to end the tenancy as of March 31, 2018.

The landlord submitted that they accepted the tenants' notice to end their tenancy which was sent by text on March 06, 2018. The landlord testified that the tenants wanted to end the tenancy as of March 31, 2018, and for the landlord to accept the tenants' security deposit as payment for rent from March 15, 2018 to March 31, 2018. The landlord submitted that they did not agree to this either verbally or in writing. The landlord stated that they did try to rent out the rental unit for April 01, 2018, but were not actually able to rent it out until May 01, 2018. The landlord submitted that they are seeking the unpaid rent from March 15, 2018, to April 15, 2018, and that they suffered a loss of rental income from April 15, 2018, to April 30, 2018.

The tenant testified that the landlord did verbally agree on March 06, 2018, to accept the end of the tenancy for March 31, 2018, and to accept the tenants' security deposit as a final rent payment. The tenant stated that the fact the landlord did not formally ask for rent on March 15, 2018, demonstrates that the landlord had accepted the security deposit as a final rent payment.

Analysis

Section 45 of the Act establishes that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

I find that it is undisputed that the landlord accepted the tenants' notice to end the tenancy on March 06, 2018. I find that the effective date of a notice to end tenancy given on March 06, 2018, for rent due on the 15th day of each month, is April 15, 2018, pursuant to section 45 of the Act. For this reason I find that the landlord is not entitled to a loss of rent for April 15, 2018, to April 30, 2018, as this tenancy ended on April 15, 2018, in accordance with section 45 of the Act.

Residential Tenancy Policy Guideline #5 states that:

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.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

I find that there is not sufficient evidence to support the tenants' claim that the landlord agreed to accept the end of the tenancy for March 31, 2018. I find that there is no actual documentary evidence in which the landlord states that they accept the tenants' proposal of accepting the security deposit as the final payment of rent and for the tenancy to end on March 31, 2018.

Based on a balance of probabilities, I find that it is possible that the tenants made a proposal and, when the landlord did not strenuously object in consideration of it, the tenants determined that the landlord agreed with the proposal. Even if the landlord had entertained the tenants' proposal, I find that an oral agreement is not sufficient to end the tenancy as per the policy guidelines. I find that a Mutual Agreement to End the Tenancy should have been completed if there was an agreement reached between the parties which did not comply with the Act.

I find that the absence of the landlord serving a 10 Day Notice on March 15, 2018, or the landlord not asking the tenants about the rent on that date is not sufficient evidence that the landlord agreed with the tenants' proposed end date for the tenancy. Based on the above testimony, I find that the landlord was aware that the tenants were not going to pay any rent on March 15, 2018 due to previous communications. I find that the landlord made their expectations clear in their e-mail on March 20, 2018, regarding the rent expected for March 15, 2018 to April 15, 2018. In consideration of the above, I find that the effective date of the tenant's notice is April 15, 2018, and that the tenants are responsible for the monthly rent from March 15, 2018 to April 15, 2018, pursuant to section 45 of the Act.

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. I find that the landlord has suffered a loss of rent under section 45 of the *Act* and that they are entitled to a monetary award in the amount of \$2,050.00, pursuant to section 67 of the *Act*.

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 unpaid rent, to retain the tenants' security deposit and to recover the filing fee for this Application:

Item	Amount
Unpaid March 15, 2018 to April 15, 2018 Rent	\$2,050.00
Less the Security Deposit	-1,025.00
Filing Fee for this application	100.00
Total Monetary Order	\$1,125.00

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: November 06, 2018

Residential Tenancy Branch