



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") filed on September 14, 2018. The landlord seeks compensation in the amount of \$4,500.00 for rent, and, compensation in the amount of \$100.00 for the filing fee, pursuant to sections 67 and 72 of the Act, respectively.

A dispute resolution hearing was convened on January 29, 2019. The landlord, her interpreter, and the tenant attended, and the parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues regarding the service of documents or evidence.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues

1. Is the landlord entitled to compensation in the amount of \$4,500.00 for rent?
2. Is the landlord entitled to compensation in the amount of \$100.00 for the filing fee?

Background and Evidence

The landlord testified and confirmed that the fixed-term tenancy commenced on April 29, 2017 and was to end on April 30, 2018. However, on December 21, 2017, the tenant gave notice to end the tenancy early with an effective end of tenancy date of

January 8, 2018. Monthly rent was \$4,500.00 and the tenant paid a security deposit of \$2,250.00, which has been returned.

The landlord testified that when the tenant gave notice to end tenancy, on December 21, 2017, her property management company “advertised right away” and found a new tenant who was to start their tenancy on March 1, 2018. She commented that the property management company recommended that she accept the new tenant due to the slow time of the year for property rentals.

On January 8, 2018, the tenant returned the keys to the landlord who refunded the tenant his security deposit. It was the landlord’s understanding that the tenant would pay for the months that the rental unit sat vacant, and the tenant paid for the rent for January. The landlord attempted to cash a cheque dated February 1, 2018, but the cheque was not cleared. (The landlord testified that the cheque was rejected, and the documentary evidence submitted indicates that a stop payment had been placed on the cheque.) The landlord’s position is that because the rental unit was vacant in February that the tenant was obligated to pay for that month.

The landlord, through her interpreter, further testified that her property management company took immediate steps to find a new tenant and posted the rental unit as being available on the company’s website, on Kijiji, and on Craigslist. The property management company also put a sign on the front lawn of the rental unit house. Rent in the advertisements was listed at \$4,500.00.

The tenant testified that the basic facts regarding the tenancy were correct, as described by the landlord. He noted that the property management company and the landlord found a new tenant on December 29, 2017, and immediately signed a new contract. (The landlord rebutted this and said that the new tenant signed their tenancy agreement on January 8, 2018.)

He argued that the landlord must make a reasonable effort to find tenants when an existing tenant cancels the tenancy in the way he did, and that nobody contacted him about the new tenant. He further argued that the landlord submitted no evidence proving that they had a sign on the front lawn and no documentary evidence proving that the landlord made any efforts after December 29 to find a tenant that might have been able to move in earlier than March 2018.

In her final submissions the landlord commented that the last time the property was listed for rent, before the tenant's tenancy, the property sat vacant for 4 to 5 months, so this was the reason why she accepted the new tenant on January 8 as quickly as she did.

In his final submission the tenant again commented "I wasn't contacted by the property management company or the landlord" regarding the new tenant. He also commented that it was just assumed by the landlord that he would pay for February's rent.

Submitted into evidence by the landlord were the following documents: a compilation of emails between the parties, a copy of the written tenancy agreement, a copy of a returned cheque, a monetary order worksheet, a written submission ("explanation letter") outlining the basis for the landlord's application, and an "estimated other costs" document that I was unable to open due to its being in an Apple OS file format.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

In this case, it is undisputed that the tenant breached the tenancy agreement by ending it before the term of the tenancy had expired. It is also undisputed that the landlord suffered a loss in rent because of the tenant's breach of the agreement. And it is undisputed that the landlord has established that the amount of her loss to be \$4,500.00, which is the rent that she lost for February 2018 that, had the tenant not breached the agreement the tenant would have paid.

The sole issue in this case is, has the landlord proven that she has done whatever was reasonable to minimize the loss?

The landlord testified that her property management company took immediate and comprehensive steps to find a new tenant. They apparently posted an advertisement for the rental unit on their own website, on two online classified services, and placed a "FOR RENT" (or similar) sign on the front lawn.

The tenant disputed the landlord's claim and argued that there is no evidence that there was a sign, and no evidence that the property management made any effort after December 29, 2018 (the date that the landlord found a new tenant) to find a tenant for February 1, 2018.

In the absence of any documentary evidence to support a claim or position made by one side, the dispute becomes a "he said she said." When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim—in this case, the landlord—has the burden to provide sufficient evidence *over and above* their testimony to establish their claim. In this case, I find that the landlord has failed to provide any documentary evidence proving what, if any, reasonable steps the landlord and her property management company took to minimize the potential loss.

While it is undisputed that the landlord found a new tenant for March 1, 2018, I have no evidence before that might establish what, if any, reasonable actions may have been taken to find a tenant who could have moved in earlier. As such, the landlord has not proven the fourth criterion of the above-noted criteria necessary to establish that she is entitled to compensation.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving her claim for compensation for a loss of rent.

I decline to grant a monetary award in the amount of \$100.00 for the filing fee.

Conclusion

The landlord's application is hereby dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 29, 2019

Residential Tenancy Branch