



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 Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, 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.

As both parties were present during the hearing, service of the landlord's notice of application for dispute resolution and amendment package were confirmed, in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenant, 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 tenancy began on August 1, 2018 and ended on November 30, 2018. Monthly rent in the amount of \$1,100.00 was payable on the first day of each month. A security deposit of \$550.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that this was a fixed term tenancy agreement set to end on July 31, 2019. The landlord entered into evidence a tenancy agreement stating same. The tenant confirmed that the signature on the last page of the tenancy agreement was his but alleged that the landlord altered the tenancy agreement after he signed it changing it from a periodic to a fixed term tenancy. The tenant testified that he would never have signed a fixed term tenancy agreement because he did not plan on spending an entire year in the area.

The tenant testified that he was never provided with a copy of the tenancy agreement. The landlord testified that she has a photocopier in her residence and provided the tenant with a copy right after he signed the tenancy agreement on August 1, 2018.

Both parties agree that on October 22, 2018 the tenant posted a letter on the landlord's door which gave notice to end the tenancy by November 30, 2018. The letter states that the landlord is not permitted to start showing the subject rental property to prospective renters until November 1, 2018. The tenant's forwarding address was included in this letter. The October 22, 2018 letter was entered into evidence.

The landlord testified that she started posting online advertisements for the subject rental property on November 1, 2018, pursuant to the instructions of the tenant. The landlord testified that she was unable to find a renter for December 2018 but was able to find a renter for January 2019 at a rate of \$1,100.00. The landlord is claiming lost rent for December 2018 from the tenant in the amount of \$1,100.00. The landlord applied for dispute resolution on December 11, 2018.

The landlord testified that she incurred an online advertising fee of \$115.95 for online postings of the rental unit. The landlord testified that she was unable to print off a receipt for the above charge.

The tenant testified that he believed the landlord was entering his suite without providing proper notice and that is why he ended the tenancy. The tenant testified that the landlord's failure to provide proper notice to enter his suite effectively breached the tenancy agreement and ended the tenancy prior to his October 22, 2018 letter.

The tenant entered into evidence a text message to the landlord dated October 16, 2018 where he informed the landlord that her alleged illegal entry violated the *Act* and that he was vacating the subject rental property on December 1, 2018. The text message did not inform the landlord that he considered her alleged illegal entry into his suite a material breach of the tenancy agreement. Nor did the text message provide the landlord with a timeline to correct the situation.

Analysis

The testimony of the parties in regard to the terms of the tenancy agreement are conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

In this case the tenant testified that the tenancy agreement was altered by the landlord after he signed it. The tenant entered no evidence to substantiate his claim. I find that the tenant has not proved, on a balance of probabilities, that the landlord altered the tenancy agreement. I therefore find that this tenancy was originally a fixed term tenancy set to end on July 31, 2019.

Section 45 of the *Act* states that if a landlord has failed to comply with a material term of the tenancy 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.

In this case, I find that the tenant has not proved that he put the landlord on notice that he considered her alleged illegal entry to the subject rental property to be a material

breach of the tenancy agreement. I find that the tenant did not provide the landlord with an opportunity within a reasonable period of time, to correct the alleged breach. I find that the tenant was not entitled to break his fixed term tenancy agreement early due to the alleged illegal entry to the subject rental property.

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.

In this case, the tenant ended a one-year fixed term tenancy early; thereby decreasing the rental income that the landlord was to receive under the tenancy agreement. Pursuant to section 7, the tenant is required to compensate the landlord for that loss of rental income. The landlord testified she listed the subject rental property for rent the day the tenant agreed she could start showing the subject rental property, that being November 1, 2018.

Subsequently, the unit was rented out for January 1, 2019. I find that the landlord mitigated her damages by advertising the subject rental property for rent on the timeline stipulated by the tenant. The tenant, pursuant to section 7 and Policy Guideline 16, is therefore liable for December 2018's rent in the amount of \$1,100.00.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the landlord failed to prove the amount of or value of the loss suffered for advertising the subject rental property for rent. I therefore dismiss the landlord's application for the cost of advertising in the amount of \$115.95.

As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Security Deposit

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 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$550.00 in part satisfaction of her monetary against the tenant.

Conclusion

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

Item	Amount
December rent	\$1,100.00
Filing Fee	\$100.00
Less security deposit	-\$550.00
TOTAL	\$650.00

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: January 29, 2019

Residential Tenancy Branch