



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

On December 2, 2018, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, the Tenants did not make an appearance. Both parties provided a solemn affirmation.

The Landlord advised that he served each Tenant a Notice of Hearing package and evidence by registered mail on December 8, 2018 (the registered mail tracking numbers are on the first page of this decision). In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Tenants were each served the Landlord’s Notice of Hearing package and evidence.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to apply the security deposit towards this debt?

- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord stated that the tenancy started on August 1, 2018 as a fixed term tenancy of one year and ended when the Tenants gave up vacant possession of the rental unit on November 28, 2018. Rent was established at \$2,000.00 per month, due on the first day of each month. A security deposit of \$1,000.00 was also paid. The Landlord submitted into evidence a tenancy agreement that was signed by both parties on July 10, 2018.

The Landlord advised that the Tenants did not give written notice to end their tenancy but advised him via text message that they would be vacating the rental unit as of November 28, 2018. He stated that the Tenants asked to meet on November 28, 2018 and he received the keys back on this date. He submitted that he cleaned the rental, then took steps to advertise the rental unit in early December in an attempt to re-rent the premises at the same amount of rent. He advised that he was able to re-rent the premises on January 1, 2019 and he is seeking compensation in the amount of **\$2,000.00** for the lost rent in December 2018.

He stated that the Tenants provided a note with their forwarding address in writing on November 28, 2018 and he subsequently made this Application. He submitted a copy of this note as documentary evidence.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

The undisputed evidence is that the parties entered into a fixed term tenancy agreement from August 1, 2018 ending July 30, 2019, yet the tenancy effectively ended when

Tenants gave up vacant possession of the rental unit. Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenants must give written notice to end a tenancy. As well, this notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy.

There is no provision in the *Act* which allows the Tenants to simply end a tenancy in the manner that they did. As I am not satisfied that the Tenants ended the Tenancy in accordance with the *Act*, I find that the Tenants vacated the rental unit contrary to Sections 44 and 45. Moreover, I find that the evidence indicates that as a result of the Tenants' actions, the Landlord suffered a rental loss.

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Additionally, in claims for loss of rental income in circumstances where the Tenants end the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Based on the evidence before me, I am satisfied that the Tenants did not end the tenancy in accordance with the *Act* and I am satisfied that the Landlord mitigated his loss by taking steps to re-rent the premises as quickly as possible. As such, I find that the Tenants are responsible for the rental loss that the Landlord suffered. Consequently, I am satisfied that the Landlord is entitled to compensation for lost December 2018 rent, totaling **\$2,000.00**.

As the Landlord was successful in his claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the amount awarded.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

December 2018 rental loss	\$2,000.00
Recovery of filing fee	\$100.00
Security deposit	-\$1,000.00
TOTAL MONETARY AWARD	\$1,100.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$1,100.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: March 26, 2019

Residential Tenancy Branch