



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 23, 2019 (the “Application”). The Landlord sought compensation for monetary loss or other money owed, to keep the security deposit and for reimbursement for the filing fee.

The Landlord and Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The Tenants advised at the outset that the security deposit had already been dealt with in File Number 1. Therefore, I have not considered the request for the Landlord to keep the security deposit.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to compensation for monetary loss or other money owed?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought \$1,450.00 in compensation for loss of rent for September.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started April 01, 2017 and was for a fixed term ending March 31, 2018 and then became a month-to-month tenancy. Rent was \$1,300.00 per month due on the first day of each month.

The parties agreed the tenancy ended August 31, 2018.

The Landlord testified as follows. The Tenants did not give him written notice that they were moving. They gave no notice at all until past the 30-day time limit for doing so. There was also an issue with the move-out date as the Tenants were going to be out September 01st rather than August 31st. He had a family interested in renting the unit, but they changed their plans when they could not move in September 01st. He listed the unit for rent September 03rd on a rental website for \$1,450.00 a month. He did not re-rent the unit until October 01st.

The Landlord submitted that he is entitled to \$1,450.00 rather than \$1,300.00 because the Tenants' breach meant he could not get new tenants for September.

The Tenants testified as follows. They did not provide written notice to end the tenancy. They provided verbal notice that they were moving out in March of 2018. They also brought up with the Landlord in July that they were moving out. The Landlord acknowledged and accepted their verbal notice that they would vacate at the end of August. They were mistaken about the move out date in relation to August 31st versus September 01st. On August 25th, they checked in with the Landlord about moving. The Landlord later showed them that they had to be out August 31st and they agreed to this in a text.

In reply, the Landlord denied that the Tenants told him verbally or through text that they were vacating at the end of August. He said the Tenants told him they were moving out in the fall but did not give a date. He said he did not know the Tenants were moving until the second week of August.

The Landlord testified that he did not list the rental unit in mid-August because the Tenants had not given written notice. He said he has had issues in the past with

tenants not giving written notice and then not vacating which caused problems for other tenants waiting to move in.

The Landlord had submitted a text from the Tenants on August 2, 2018 stating:

Hi...I sent an email regarding us moving out Sept 1st. Just wanted to make sure you received it.

The Landlord replied:

No I haven't seen it....

The Landlord then confirms his email address.

The Landlord said the Tenants never followed up with an email and that he was waiting for this.

The Tenants submitted an email from a potential purchaser of the rental unit stating she had a conversation with the Landlord who told her at the end of March that the Tenants would be moving out September 01st.

The Tenants submitted text messages showing a conversation between the parties on August 30th about the move out date.

Analysis

Section 7(1) of the *Act* states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Tenants can end a tenancy by giving notice in accordance with section 45 of the *Act*. Section 45 of the *Act* states:

45 (1) A tenant may end a periodic 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, and

(b) 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.

...

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

Section 52 of the *Act* requires a notice to end tenancy to be in writing.

The Tenants acknowledged that they did not give written notice to end the tenancy. I find this was a breach of section 45 and 52 of the *Act*.

The Landlord testified that he realised mid-August that the Tenants were in fact vacating at the end of the month. He said he did not post the unit for rent at that time because he had not received written notice from the Tenants, he was waiting for this and he has had problems in the past when tenants did not provide written notice and then did not move out. I find the Landlord was entitled to wait for proper notice from the Tenants before acting and attempting to re-rent the unit and agree that failing to do so could have resulted in problems for the Landlord in relation to new tenants.

I accept that the failure of the Tenants to provide proper notice resulted in the Landlord delaying listing the rental unit and resulted in loss as the unit was not re-rented for September.

There is no issue that the Tenants did vacate August 31st. The Landlord testified that he posted the rental unit for rent September 03rd. The Tenants did not dispute this. I find this to be within a reasonable time of the Tenants vacating and accept that the Landlord mitigated his loss.

I acknowledge that the Landlord posted the unit for rent at \$1,450.00, a higher rate than the Tenants' rent. Although this can lead to a finding that the Landlord did not mitigate their loss, I do not find that it does here. The increase in rent was not drastic. The Landlord is only seeking one month of rental loss. I find the Landlord is entitled to the rental loss given the Tenants failed to give proper notice to end the tenancy thus delaying the Landlord's ability to list the unit and re-rent it for September 01st.

I also note that the only evidence of a clear indication by the Tenants that they were in fact moving September 01st was the text sent August 02nd. I do not find the email from the potential purchaser to be sufficient to show that the Tenants provided clear notice to the Landlord that they were vacating by September 01st.

Even if I accepted that the Landlord should have known by the August 02nd text that the Tenants were in fact vacating September 01st, this notice was provided too late for an August 31st move-out date given the requirements in section 45(1) of the *Act*. Under section 53 of the *Act*, the notice would only have been effective September 30th and the Tenants would have had to pay rent for September in any event.

In the circumstances, I find the Landlord is entitled to the compensation sought. I find the Landlord is entitled to \$1,300.00 for loss of September rent as this is the rent amount the Tenants would have paid if they had provided proper notice.

Given the Landlord was successful in this application, I award him reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$1,400.00. The Landlord is issued a Monetary Order in this amount.

Conclusion

The Landlord is entitled to \$1,400.00 in compensation. The Landlord is issued a Monetary Order in this amount. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it 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 *Act*.

Dated: May 16, 2019

Residential Tenancy Branch