



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MNR, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenants provided the correct spelling for Tenant PL’s last name. As the Parties agree that the name should be corrected, I make that correction on this Decision and any order that may be issued.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy, under written agreement, started on December 1, 2018 for a fixed term to end November 30, 2019. The tenancy ended on

March 1, 2019 and the Tenants provided their forwarding address at the move-out inspection on that date. Rent of \$2,100.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,050.00 as a security deposit and \$500.00 as a pet deposit. The pet deposit has been returned to the Tenants. Section 5 of the tenancy agreement provides that

The Landlord states that in mid-February 2019 the Tenants gave verbal notice through a 3rd party to end the tenancy for the end of February 2019. The Landlord states that the Tenants were informed that the Landlord would be seeking both rent to the end of the tenancy and the liquidated damages amount. The Landlord states that the unit was advertised on the Landlord's website on February 15, 2019 for the same amount of rent. The Landlord states that the unit was rented for April 1, 2019 and that the Tenants declined access to the Landlord for showing the unit. The Landlord confirms that the Tenants were never given any notice of entry by the Landlord for this purpose. The Landlord states that there was no interest in the rental unit until after March 1, 2019 and that the unit was rented for April 1, 2019. It is noted that the Landlord did not provide any supporting documentary evidence of the rental advertisements or the new tenancy agreement. The Landlord claims \$2,100.00 as unpaid rent or lost rental income and liquidated damages of \$575.00.

The Tenant states that the Landlord said nothing to them about pursuing rent for March 2019 and that the Tenants do not agree to pay any rent for March 2019. The Tenants state that Landlord's MW was present for the move-out inspection and that the Landlord signed off on the move-out report that the Landlord would not pursue March 2019 rent. The Tenants state that there were several problem items with the tenancy and that they ended the tenancy for these reasons. The Tenants state that the Landlord's claim for both rent and liquidated damages is unfair when no repairs were made to the unit. Landlord MW states that there was no agreement at move-out to not seek March 2019 rent and that the note on the move-out report does not indicate such agreement.

Analysis

Section 44(1)(d) of the Act provides that a tenancy ends if the tenant vacates or abandons the rental unit. No further rent is payable after a tenancy ends. As the Tenants vacated the unit on March 1, 2019 I find that the tenancy ended at this point and no further rent was payable.

Section 45(2) of the Act provides that a tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

As the Tenants were not able to end the tenancy until the fixed term date of November 30, 2019 and based on the undisputed evidence that the Tenants moved out of the unit before this date I find that the Tenants breached the Act and are therefore liable for losses arising from the breach of the fixed term. The Tenants' evidence that they ended the tenancy due to the lack of repairs and other issues with the tenancy is not a basis for the Tenants to breach the fixed term tenancy as the Tenants could have sought orders for repairs or orders to remedy other breaches by the Landlord instead of ending the tenancy.

"Liquidated damages" is a term for a legal principle where, by agreement, one party accepts a sum of money for damages arising from the other party's breach and no other monies are then payable as damages for that breach. This amount limits or determines in advance the damages flowing from the early end of the tenancy or a breach of a fixed term. Although the tenancy agreement liquidated damages clause also provides that payment of liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated, such claims would arise from

different breaches of the tenancy agreement or Act such as not paying rent while occupying the unit or leaving the unit with damages such that the re-rental of the unit is delayed causing a loss of rental income. These are not damages that would flow from an early end of the tenancy and are therefore not limited or predetermined by the liquidated damages amount.

As the Landlord is claiming lost rental income and is also seeking liquidated damages for this same breach, I consider that the Landlord is making a conflicting claim for the same breach. As the lost rental income claim is a claim that flows from an early end of tenancy or breach of the fixed term, as the liquidated damages arising from this breach have been determined by agreement in advance at \$575.00, I resolve the conflict arising from the Landlord's claim for lost rental income in favor of the Tenant and find that the Landlord is only entitled to the liquidated damages amount of **\$575.00**. For the above reasons I dismiss the claim for unpaid rent or lost rental income.

As there is no evidence that the Landlord gave the Tenants the opportunity to pay the agreed sum of liquidated damages prior to making its application I find that the Landlord is not entitled to recovery of the filing fee and I dismiss this claim. Deducting the Landlord's entitlement of **\$575.00** from the security deposit plus zero interest of **\$1,050.00** leaves **\$475.00** to be returned to the Tenants forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$475.00**. If necessary, this order may be filed in the Small Claims 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: June 19, 2019

Residential Tenancy Branch