



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “Act”), for a monetary order for damages or compensation for losses under the *Act*, an order to retain the security deposit and for the return of their filing fee. The matter was set for a conference call.

Both parties attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return of their filing fee for this application?

Background and Evidence

Both parties agreed they signed a one-year fixed term tenancy that began on January 1, 2019. Rent in the amount of \$1,500.00 was payable on the first day of each month, and that the Tenants paid a \$750.00 security deposit **and a \$325.00 pet damage deposit** at the outset of this tenancy. Both parties also agree that there had been an addendum to the tenancy agreement; the Landlord provided a copy of the tenancy agreement with

the addendum into documentary evidence. The parties agreed that they ended the tenancy early on February 12, 2019.

The Tenants testified that they were not happy in the rental unit and decided to end the tenancy early for several reasons, including that the Landlord required them to pay the full electrical bill for both the upstairs unit, which the Landlord lived in and the downstairs unit which the Tenants occupied. The Tenants testified that they did not believe that they had agreed to pay for the Landlord's electrical usage and that when the Landlord insisted they decided that ending the tenancy was their best option.

The Landlord testified that the tenancy agreement had clearly stated that electrical was not included and that since she paid the rest of the utility bills for the property, it was only fair that the Tenants pay the full electrical bill for the property.

"Tenancy Agreement Addendum

5. Electricity full responsibility of tenant(s) billed directly to Landlord.
The amount must be received in full within 10 days of receiving a copy of the bill by tenants."

The Landlord testified that as per the tenancy agreement the Tenants are responsible for the full electrical bill for the property, for January, February and March 2019; until the new renter moved in and took over the tenancy. The Landlord is requesting to recover \$539.55 in outstanding electrical bills for this tenancy. The Landlord submitted copies of the electrical bills for January, February and March 2019, into documentary evidence.

The Landlord testified that she started advertising the rental unit as available on February 5, 2019, but that it took her six weeks to locate a new renter to take over the rental unit and confirmed that the new renter moved in as of April 1, 2019. The Landlord testified that she lost one month of rental income, for the month of March 2019, due to the Tenants short notice.

The Tenants testified that the rental market in the area where the rental property is located is zero percent availability and that it should have been easy for the Landlord to find a new renter to take over the tenancy. The Tenants testified that the Landlord only listed the rental unit as available for March 1, 2019, even though they had moved out by February 12, 2019, which limited the number of people that could have rented the property. The Tenants testified that they feel the Landlord did not make a sufficient effort to rent the property after they had moved out.

The Landlord testified that she is also requesting to recover \$135.40 in her advertising cost for listing the rental unit on two online websites. The Landlord submitted copies of two online advertising bills into documentary evidence.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find as follows:

I have reviewed the tenancy agreement, and two-page addendum for this tenancy and I find that the parties to this dispute entered into a one-year fixed term tenancy, starting January 1, 2019, and ending December 31, 2019.

Section 45(2) of the *Act* states that a tenant cannot end a fixed term tenancy agreement earlier than the date specified in the tenancy agreement as the end of the tenancy.

Tenant's notice

45 (2) 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.

I accept the agreed upon testimony of these parties that the Tenants ended their tenancy early on February 12, 2019. As I have already found that this tenancy agreement was for a fixed term ending December 31, 2019, I find that the Tenants were in breach of section 45 of the *Act* when they issued notice to end the tenancy before the agreed to date in the tenancy agreement.

Awards for compensation due to damage or loss are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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 accept the Landlord’s testimony that she took steps right away to located a new renter for the rental unit, and I find that the Landlord has provided sufficient evidence to prove the value of her loss of rental income and that she took reasonable steps to minimize the losses due to the Tenants’ breach. Therefore, I find that the Landlord has established an entitlement to recovery, her loss of rental income for March 2019, in the amount of \$1,500.00.

Additionally, I find that the Landlord suffered a loss of additional advertising cost, due to the Tenants breach of the Act, and that the Landlord has provided sufficient evidence to prove the value of her loss to advertise the rental unit. I find that the Landlord has established an entitlement to a recovery her advertising costs, in the amount of \$135.40.

The Landlord has claimed for \$539.55 in unpaid electrical bills of the tenancy. Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if, the term is not expressed in a manner that clearly communicates the rights and obligation under it or is found to be an unconscionable term.

Enforcing rights and obligations of landlords and tenants

- 6 (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.
- (2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *[determining disputes]*.
- (3) A term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

After careful review of addendum provision number five, regarding the payment of the electrical bill, and I find that addendum provision number five of this tenancy agreement does indicate that the Tenants are to pay the electrical bill. However, I find that the wording of provision five to be unclear and does not outline that the Tenants would be required to pay for the Landlord's electrical use as well as their own.

As it was the Landlord who drew up this tenancy agreement, I find that the Landlord bore the obligation to ensure that the terms therein were certain, and the obligation of the parties was well-defined. I find that pursuant to the rule of *contra proferentem*, the ambiguity in this term must be resolved against the Landlord who drafted the tenancy agreement.

Additionally, I find that the Landlord's attempt to include a term in the tenancy agreement, that the Tenants would have to pay for her electrical use to be an unconscionable term, and even if it had been clearly defined in the agreement, it would not be enforceable under the Act. Therefore, I dismiss the Landlord's claim for the recovery of the electrical bills in its entirety.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. In this case, I find that the Landlord's use of an ambiguous and unconscionable term in this tenancy agreement has partially led to the need for this hearing today. Due to this, I find that the Landlord is not entitled to the recovery of her filing fee.

Overall, I find that the Landlord has established an entitlement to a monetary order in the amount of ~~\$885.40~~ **\$560.40**; consisting of \$1,500.00 the loss of rental income for March 2019, \$135.40 in advertising costs, less the \$750.00 **security** deposit **and the \$325.00 pet damage deposit** the Landlord holds for this tenancy.

Conclusion

I find for the Tenant pursuant to sections 38 and 65 of the Act. I grant the Landlord a **Monetary Order** in the amount of ~~\$885.40~~ **\$560.40**. The Landlord is provided with this

Order 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: June 6, 2019

Residential Tenancy Branch

Correction Dated: June 19, 2019