



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-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 28, 2019 (the “Application”). The Landlord sought compensation for monetary loss or other money owed, to recover unpaid rent, to keep the security deposit and for reimbursement for the filing fee.

This matter came before me for a hearing March 19, 2019 and an Interim Decision was issued March 21, 2019. This decision should be read with the Interim Decision.

The Landlord appeared at the hearing. I had asked the Landlord at the first hearing to have someone appear with her at the adjourned hearing to assist as I found it difficult to understand the Landlord given a language barrier. The Landlord advised that she was not able to have someone appear at the adjourned hearing with her.

The Tenants appeared at the hearing with the Co-tenants J.M. and A.N.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence pointed to during the hearing and all oral testimony of the parties. 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 recover unpaid rent?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord sought the following compensation:

| | | |
|---|---|--------------------------------------|
| 1 | September rent | \$3,000.00 |
| 2 | Rent for 5 months | \$3,000.00 x 4 = \$12,000.00 |
| 3 | Difference of rent between upper unit and basement unit | \$9,000.00 - \$3,000.00 = \$6,000.00 |
| 4 | Garbage disposal | \$200.00 |
| | TOTAL | \$21,200.00 |

I note that the Landlord sought a further \$2,000.00 in the Amendment which was not allowed as outlined in the Interim Decision.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It was between the Landlord and Tenants in relation to the rental unit. The tenancy started August 01, 2018 and was for a fixed term ending August 31, 2019. Rent was \$3,000.00 per month. The parties agreed rent was due on the first day of each month. The Tenants paid a \$1,500.00 security deposit. The agreement is signed by the Landlord and Tenants.

September rent and rent for five months

The Landlord sought unpaid rent and loss of rent based on the Tenants not giving proper notice and ending the fixed term tenancy early.

The Landlord testified as follows. The Tenants did not give one months notice to end the tenancy. They gave notice to end the tenancy August 23, 2018. The Tenants never paid rent for September. She listed the unit for rent on a rental website September 5, 2018, November of 2018 and January of 2019. She listed it for \$2,800.00 per month. The Tenants had asked that she make the basement into four bedrooms with no living room which has made it difficult to rent to families. Given the timing of the notice, she missed the chance to rent rooms to university students. Two of the rooms were rented

in February of 2019 for a total of \$1,300.00 per month in rent. She still has not rented the remaining two rooms.

The Landlord pointed to evidence at page 20 to 23 of her evidence package. These are emails in relation to the rental listing on the rental website.

Tenant T.C. testified as follows. The Tenants ended the tenancy early because material items on the tenancy agreement were not provided. The Tenants were not given rooms and there were no laundry facilities. They gave the Landlord many chances to rectify the situation, but she was unable to.

Tenant T.C. further testified as follows. The rental unit is in a house with an upper and lower unit. The Landlord arranged temporary lodging for the male tenants only due to overlapping tenancies in the basement unit. The basement unit was not fit to reside in given hazards including a gas leak, missing carbon monoxide detector and defective electrical wiring.

T.C. pointed to page 2 of Bundle C of the Tenants' evidence. This is an email exchange between a prior tenant and the Landlord about the upstairs washing machine not working.

The Tenants acknowledged that they never gave the Landlord written notice stating that she had failed to comply with a material term of the tenancy agreement and a deadline to correct this. The Tenants submitted that this was an urgent situation and so they did not provide this written notice to the Landlord.

Tenant A.N. testified that the tenants did not move into the basement and so what was agreed upon was not provided. He stated that the tenants were only provided two rooms in the upper unit. He pointed to page 50 of the Landlord's evidence. This includes a text message between A.N. and the Landlord on August 15, 2018. The full text is not included; however, it shows A.N. asked the Landlord to resolve an issue with the tenants in the basement who were supposed to move out August 15, 2018 as the tenants have paid to live in the basement for the month of August.

Tenant A.N. pointed to page 1 of Bundle B of the Tenants' evidence in relation to the rental unit not being fit to reside in. This is a notice from FortisBC stating they have found defects in the natural gas installation at the rental unit address and that a gas fitter should be contacted to check this. The comments state, "Dusty old furnace needs serviced ASAP and annually". It also states, "3 gas leaks" and "gas off at the meter".

Lastly it states, "CO detector". I note that there is no date on this notice. Tenant A.N. testified that the situation was urgent and very dangerous because of the gas leaks.

Tenant T.C. testified that the rental unit has not been re-rented because it is run down and not fit for residence because of the gas leaks and missing CO detector. She said there is an ongoing investigation by the city about the house not being fit to reside in.

In reply, the Landlord testified as follows. The gas issue was solved July 10, 2018. The Landlord pointed to page 60 of her evidence. This is an email from July 10, 2018 stating the gas worker is on the way to the house and asking that the recipient open the door to show him the three spots. There is an email below this dated July 09, 2019 from a third party stating that the person who came to look at the furnace found three gas leaks and that the gas/Co2 detector is not working and needs to be replaced ASAP and that if it worsens the house may need to be evacuated.

The Landlord further testified as follows. Someone attended the house August 05, 2018 to install a new washing machine. The Landlord pointed to page 25 and 26 of her evidence. These are photos of the washing machine being removed August 05, 2018 and photos of the new washing machine and basement laundry.

The Landlord further testified as follows. There are five bedrooms in the upstairs unit. The Tenants were not in the city. She gave the tenants four bedrooms instead of the basement and they accepted this. The three male tenants moved into the upper unit. When Tenant T.C. came back, she said she will move in August 17, 2018. The Landlord pointed to page 40 and 41 of her evidence. These are text messages. Most of them are in a different language such that I cannot read them. There is a text from Tenant T.C. to the Landlord dated August 17, 2018 about girls in the upstairs unit moving and on August 18, 2018 Tenant T.C. stating, "They left, thanks. I will be moving in soon..."

The Landlord provided written submissions which state that she rented the basement unit to others for the summer with the Tenants' approval.

The Tenants provided written submissions which include the following. The Tenants terminated the tenancy agreement August 23, 2018 by notice served through registered mail. The Landlord had breached the tenancy agreement by allowing overlapping tenancies, renting the unit which was not fit to reside in, failing to provide material items and violating "RTA policy". Serious safety and health hazards included gas leaks, furnace not serviced, lack of CO detector, faulty electrical circuits, plumbing leaks and

lack of yard maintenance. The Landlord was out of the country but did not delegate her responsibilities to a local representative. The Landlord did not provide contact information for an agent during July and August while she was out of the country.

The parties referred to an "Affidavit" of a plumber submitted as evidence. I have read this and do not find that it assists other than to confirm that the washing machine was removed from the upstairs unit August 05, 2018.

Difference of rent between upper unit and basement unit

I understood the Landlord to testify as follows. This request is in relation to August rent. She told the Tenants the basement was rented to others for August and asked if they could stay upstairs. The three male tenants who lived upstairs paid \$3,000.00 in rent. The Tenants terminated the lease early. If she knew the Tenants were going to terminate the lease early, she would not have let them move into the upstairs unit and would have rented it to others. The rent for upstairs would have been \$9,000.00. The Landlord pointed to a tenancy agreement with different tenants in this regard submitted as evidence.

Tenant T.C. testified as follows. The Tenants were not made aware of the difference in rent. They would not have agreed to this. Living upstairs was a temporary solution because of the overlapping tenancies in relation to the basement unit for August. The Tenants were only given two rooms upstairs and not the full unit. Tenant L.K. tried to move in August 01, 2018 but was unable to because there was not enough room.

Tenant A.N. pointed to page 1 of Bundle B of the Tenants' evidence. This is a message from the Landlord stating, "The rent of the upper two floors is 9000 CAD per month. I did not add any rent from your roommates..."

Garbage disposal

The Landlord pointed to photos of garbage left outside at the house. She testified that she is seeking compensation for removing the garbage.

Tenant A.N. testified that the Tenants were not the only tenants living at the house at the time as there were tenants living in the basement unit. He testified that the Tenants were not responsible for the garbage left at the house. He pointed to page 42 of the Landlord's evidence showing that other people were living in the upstairs unit. This is a tenancy agreement between the Landlord and two tenants, other than the tenants

involved here, in relation to “2 floors of” the house. The tenancy started May 03, 2018 and was for a fixed term ending July 31, 2019. Rent is \$9,000.00 per month due on the first day of each month. The agreement is signed by all three parties.

Tenant A.N. also pointed to a tenancy agreement at page 8 of Bundle A of the Tenants’ evidence. This is a tenancy agreement between the Landlord and two tenants, other than the tenants involved here, in relation to the basement unit. The tenancy started June 19, 2018 and was for a fixed term ending August 31, 2018. Rent was \$4,000.00 per month. The agreement is signed by all three parties.

In reply, the Landlord testified that the other upstairs tenants moved out July 01, 2018. She said the basement unit tenants moved out August 17 or 18, 2018. She said photos of the house were taken August 18, 2018 and there was no garbage.

The Landlord submitted a handwritten receipt from an individual who states they received \$200.00 from the Landlord to clean up garbage.

Analysis

Section 7 of the *Residential Tenancy Act* (the “Act”) states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant’s] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 16 of the *Act* states:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

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.

The Tenants were bound by the tenancy agreement when they signed the agreement and paid the security deposit. There is no issue that the tenancy agreement was for a fixed term starting August 01, 2018 and ending August 31, 2019.

Further, there is no issue that the Tenants ended the fixed term tenancy early as the parties both agreed the Tenants gave notice ending the tenancy at the end of August of 2018.

Section 45 of the *Act* outlines how and when tenants can end a fixed term tenancy and states:

(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.

(3) 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.

Policy Guideline 8 deals with material terms and states as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

The Tenants provided a number of reasons for ending the fixed term tenancy early. The Tenants acknowledged that they never gave the Landlord written notice stating that she had failed to comply with a material term of the tenancy agreement and a deadline to correct this. The Tenants were required to do so to end the fixed term tenancy in accordance with the *Act*. Given the Tenants failed to do so, they failed to comply with section 45 of the *Act*.

I do not find the submissions of the Tenants in relation to the reasons they did not provide notice in accordance with section 45(3) of the *Act* to be relevant as section 45 of the *Act* does not include exceptions to the requirements set out in it.

I am satisfied the Tenants breached the *Act*.

I accept the testimony of the Landlord that the rental unit was not re-rented until February of 2019 based in part on the evidence submitted relating to re-listing the rental unit. There was nothing about the Landlord's testimony in this regard that caused me to

question the accuracy of it. There is no evidence before me suggesting that the rental unit has not remained empty. I am satisfied loss of rent resulted from the Tenants' breach.

I am satisfied based on the evidence relating to the rental website that the Landlord mitigated her loss to some extent. I am satisfied the Landlord re-listed the rental unit September 03, 2018, shortly after receiving the Tenants' notice ending the tenancy. I am also satisfied that the Landlord mitigated her loss by re-posting the ad as shown in her evidence.

However, I do find that the Landlord should have done more to mitigate her loss. I am not satisfied based on the evidence submitted that the Landlord posted the rental unit for rent on more than one website. The Landlord did not submit the actual ad posted in September and therefore I cannot be satisfied as to the contents of the ad or that the ad was sufficient to meet the obligations of the Landlord to mitigate her loss. Nor am I satisfied based on the evidence that the Landlord took further steps to mitigate her loss such as updating the ads more often. Although I do not find that further steps are always required, I do find that the Landlord should have taken more than the minimal steps required when the rental unit had not been rented for more than two months after the Tenants vacated.

I note that I do not accept that the rental unit has not been rented because it is unfit to reside in as I do not find there is sufficient reliable evidence in support of this submission.

In the circumstances, I find the Landlord is entitled to compensation for September, October and November. When the rental unit was still empty in November, the Landlord should have taken further steps to re-rent the unit.

I am satisfied the Landlord is entitled to \$9,000.00 in compensation for three months of loss of rent.

Difference of rent between upper unit and basement unit

I do not accept that the Landlord is entitled to the difference in August rent between the upper unit and basement unit. It was the Landlord's action of renting the basement unit to other tenants until the end of August that resulted in the three male tenants living in the upper unit. It is not the Tenants' fault this occurred. There is no evidence showing

the parties agreed the Tenants would pay more rent for August because they were in the upstairs unit.

I do not accept that the Tenants' breach of the *Act* in ending the fixed term tenancy early resulted in the Landlord receiving less rent than usual for August for the upstairs unit. Again, it was the actions of the Landlord that resulted in this loss.

The Landlord has failed to show the Tenants breached the *Act* and thus caused loss in relation to this issue.

Garbage disposal

The parties gave conflicting testimony about who was living at the house when the three male tenants were in August. The Tenants denied leaving the garbage.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Landlord who has the onus to prove the claim.

I am not satisfied based on the evidence of the Landlord that the three male tenants were the only tenants living at the house in August and in fact the evidence shows that the basement tenants were still in the basement unit in August. Nor am I satisfied based on the evidence that the other tenants living at the house in August left the house and yard clean. Therefore, I am not satisfied the Tenants left the garbage.

The Landlord has failed to show the Tenants breached the *Act* in relation to this issue.

In summary, the Landlord is entitled to the following compensation:

| | | |
|---|---|-----------------------------------|
| 1 | September rent | \$3,000.00 |
| 2 | Rent for 5 months | \$6,000.00 for two further months |
| 3 | Difference of rent between upper unit and basement unit | - |
| 4 | Garbage disposal | - |
| | TOTAL | \$9,000.00 |

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

In total, the Landlord is entitled to \$9,100.00 and I issue the Landlord a Monetary Order in this amount.

Conclusion

The Landlord is entitled to \$9,100.00 and 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: June 12, 2019

Residential Tenancy Branch