



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:44 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and her support person and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were individually served with her application for dispute resolution via registered mail on February 21, 2019. The Canada Post receipts containing tracking numbers for same were entered into evidence. I find that the tenants were deemed served with the landlord's application for dispute resolution on February 26, 2019, five days after their mailing, in accordance with section 89 and 90 of the *Act*.

Issue to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on November 1, 2016 and ended on March 14, 2017. This tenancy was originally a fixed term tenancy set to end on April 30, 2017. Monthly rent in the amount of \$1,350.00 was payable on the first day of each month. A security deposit of \$675.00 was paid by the tenants to the landlord.

The landlord testified that she made a clerical error on the tenancy agreement and wrote that the tenancy ended on April 30, 2016 instead of April 30, 2017. The tenancy agreement was entered into evidence and was signed by the landlord on October 28, 2016 and by the tenants on November 9, 2016.

The landlord testified to the following facts. The tenants advised her via text message on February 23, 2017 that they would have difficulty paying March 2017's rent on time. The February 23, 2017 text message was entered into evidence. On March 4, 2017 the tenants e-mailed the landlord and authorized the landlord to use their security deposit for half of March 2017's rent. On March 13, 2017 the landlord had not yet received the remainder of March 2017's rent and so e-mailed the tenants. On March 14, 2017 the tenants told the landlord via e-mail that they moved out of the subject rental property. The above emails were entered into evidence. The landlord testified that the tenants did not pay March or April 2017's rent.

The landlord testified that prior to the tenant's providing notice that they vacated the subject rental property, the landlord entered into a new tenancy agreement with new tenants effective May 1, 2017.

The landlord is seeking to recover March and April 2017's rent in the amount of \$1,700.00 from the tenants.

Analysis

Loss of Rental Income

Based on the landlord's undisputed testimony I find that this was a fixed term tenancy set to end on April 30, 2017. I accept the landlord's testimony that the end date of April 30, 2016 was a typo. I note that the landlord's testimony is supported by common sense as it is highly unlikely that either party intended on entering into a tenancy agreement that had an end date which was before the start date of the tenancy.

Section 45(2) of the *Act* states 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.

Under section 7 of the *Act* a landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known

in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

Policy Guideline 3 states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

At the time the tenancy agreement ended the move out provision effective on the date the tenancy ended was still enforceable under the *Act*. I find that the landlord was not in a position to further mitigate her damages as she already had new tenants moving into the subject rental property on May 1, 2017. I find that it would not have been reasonable for the landlord to find a new tenant for a term of only 1-1.5 months in these circumstances. I find that the landlord met her duty to mitigate her damages.

While e-mail is not a recognized method of service under the *Act*, I find that the landlord was sufficiently served, for the purposes of this *Act*, with the tenants notice that they vacated the subject rental property on March 14, 2017. Pursuant to section 45(2)(a) and 45(2)(b) of the *Act* the earliest date the tenants were permitted to end their fixed term tenancy was April 30, 2017. Pursuant to the above, I find that the tenants are responsible for the landlord's loss of rental income for the months of March and April 2017 in the amount of \$2,700.00.

Security Deposit

Section 38(4)(a) of the *Act* states that a landlord may retain an amount from a security deposit or a pet damage deposit if at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

I find that in the email dated March 4, 2017 the tenants authorized the landlord to retain their security deposit as partial payment of March 2017 rent, pursuant to section 38(4)(a) of the *Act*.

I find that the landlord is permitted to retain the tenants' entire security deposit, in partial satisfaction of her monetary claim against the tenants.

As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
March 2017 rent	\$1,350.00
April 2017 rent	\$1,350.00
Filing Fee	\$100.00
Less security deposit	-\$675.00
TOTAL	\$2,125.00

The landlord 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 03, 2019

Residential Tenancy Branch