



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

The landlords apply for a monetary award for loss of rental income related to the tenants allegedly terminating a fixed term tenancy before the end of the agreed upon term.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Did the tenants breach a fixed term tenancy agreement and, if so, did the landlords suffer rental losses as a result?

Background and Evidence

The rental unit is the lower portion of a house. The landlords occupy the upper portion and the tenants rented a “garden level” unit composed of two bedrooms. The tenancy started in August 2016 under a one year fixed term tenancy agreement at a rent of \$1800.00. The agreement was renewed every summer. In the summer of 2018 the renewal included a rise in monthly rent to \$2100.00.

In February 2019 the tenants wrote to the landlords purporting to end the tenancy at the end of March 2019. They paid the rent to the end of March and left.

The landlords brought this application on April 2.

The landlord Mr. G. presents the most recent tenancy agreement, made in the summer of 2018. It is in the standard government form and is for a fixed term of one year at a monthly rent of \$2100.00.

He says that after the tenants left he attempted to re-rent the rental unit but was stymied by the fact that his chief tenancy clientele are the families of children who are attending a local school, indeed these tenants were such a family, and that such a clientele is very thin at this time of the school year. He says that he secured new tenants for June 1, 2019 but only at a monthly rent of \$1800.00.

The landlords therefore seek rent due under the tenancy agreement for April and May, as well as the \$300.00 monthly difference in rent they will receive over the one year fixed term of their new tenants. They want to recover utility bills totalling \$553.95 (conceded by the tenants at hearing), the filing fee, postage costs and \$1000.00 for their effort in finding new tenants.

Mr. D. presented himself as an advocate for the tenants. Neither tenant offered testimony.

Mr. D. submits that the tenancy relationship was not for a fixed term and so the tenants could end it as they did; with one month's notice. He says that in any event the landlords had a reasonable time to find new tenants and failed to do so. He says that the increase in rent in August 2018 from \$1800.00 to \$2100.00 was an unlawful rent increase. He submits that the tenants are not responsible for present difference in rent over the entire term of the new tenancy.,

Analysis

Fixed Term Tenancy

The operative tenancy agreement submitted by the landlords shows that in area "2" dealing with "Length of Tenancy," the parties did not indicate, by checking a box, whether the tenancy continued on a month to month basis, another fixed term or whether the tenants were obliged to move out.

Below is an extract from the 2018-2019 agreement.

2. LENGTH OF TENANCY (please fill in the dates and times in the spaces provided)

This tenancy starts on: 01 AUGUST 2018
day month year

Length of tenancy: (please check a, b or c and provide additional information as requested)

This tenancy is:

☐ a) on a month-to-month basis

☒ b) for a fixed length of time: ONE full year ending on: 31 July 2019
length of time day month year

At the end of this fixed length of time: (please check one option, i or ii)

☐ i) the tenancy may continue on a month-to-month basis or another fixed length of time

☐ ii) the tenancy ends and the tenant must move out of the residential unit
 If you choose this option, both the landlord and tenant must initial in the boxes to the right.

Landlord's
Initials
JH

Tenant's
Initials
M.A

☐ c) other periodic tenancy as indicated below:

☐ weekly ☐ bi-weekly ☒ other: NEW ONE YEAR LEASE TERM

Mr. D. for the tenants further alleges that the tenant's initials were forged in this extract and that the tenants have a copy of this document in which those initials do not appear. Mr. D. acknowledges that the tenant Mr. M.A.'s initials do properly appear elsewhere in the tenancy agreement.

Insofar as the question is whether or not this tenancy was for a fixed term of length I find that the tenancy agreement clearly shows that it was. It was a "new one year lease term" and "for a fixed length of time: one full year ending on: 31 July 2019."

The agreement may or may not be clear about what was to happen at the end of the fixed term, namely whether the tenants were required to vacate the rental unit or whether the tenancy became a period one, but that is not the question in this matter.

In result, the ending of this tenancy by the tenants before the end of the fixed term was a repudiation and a fundamental breach of the tenancy. As noted by Residential Tenancy Policy Guideline 3, "Claims for Rent and Damages for Loss of Rental Income"

Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options. These are:

1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment;
2. Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.

In this case the landlords chose the latter. The tenants are responsible for the rent for the remainder of the fixed term. The landlords are under an obligation to mitigate their loss by trying to re-rent the premises.

Mitigation

Mr. D. for the tenants says the landlords did not take reasonable steps to mitigate their loss. The proof of a failure to mitigate a loss lies with the one alleging that failure, the tenants in this case. They have presented no reasonable basis for one to conclude that the landlords did not take reasonable steps in a timely manner to find new tenants.

Unlawful Rent Increase

Mr. D. for the tenants argues that when the rent went from \$1800.00 to \$2100.00 per month in August 2018 it was an unlawful rent increase and so the landlords should not be able to claim rental loss of any amount more than \$1800.00 per month.

Part 3 of the *Residential Tenancy Act* (the “Act”) sets out the rules for rent increases. It prohibits rent increases more frequently than every twelve months and only up to a certain percentage set by regulation. There is no dispute but that a rent increase from \$1800.00 to \$2100.00 would be well in excess of the permitted increase for 2018.

Part 3 makes clear that it relates to rent increases “imposed” by a landlord and not increases agreed to between the parties.

In this case it is apparent that rent negotiated with the expiry of the 2017 fixed term agreement and the commencement of the 2018 agreement was a rent agreed to between the parties. It was not imposed on the tenants by the landlords. Thus, it was not an unlawful rent increase.

Landlord Loss

In the circumstances of this case, because the tenants breached the tenancy agreement by ending it before the expiry of its fixed term, the landlords lost rental income for April and May while seeking replacement tenants. I award them \$4200.00 for that loss.

New tenants were found for June 1 but only at a rent of \$1800.00. Thus the landlords have lost \$300.00 rental income for June and July, the last two months of the fixed term tenancy. There is no legal basis to award the landlords a loss of rental income past the July 31 ending of the fixed term with the respondent tenants. The landlords' claim for loss of rental income over the term of the new tenancy is refused. I award the landlords \$600.00 under this item of the claim.

The landlord Mr. G. explained his utilities calculation at hearing and the tenants accepted it. I award the landlords \$553.95 as claimed.

I dismiss the landlord Mr. G.'s claim for compensation for time spent showing the unit. That is normally part of the business of being a landlord and nothing in the circumstances of this dispute would take the matter out of that realm.

I dismiss the landlords' claim for recovery of postal costs. Such a claim is in the nature of a claim for "fees and disbursements" incurred in the pursuit of this dispute resolution. An arbitrator's powers in that regard are limited to awarding recovery of the filing fee and I award the landlords' recovery of the \$100.00 filing fee

Conclusion

The landlords are entitled to a monetary award of \$5353.95 plus the \$100.00 filing fee. I authorize the landlords to retain the \$975.00 security deposit they hold, in reduction of the amount awarded. The landlords will have a monetary order against the tenants for the remainder of \$4478.95

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 17, 2019

Residential Tenancy Branch