



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ONNI PROPERTY MANAGEMENT SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FFL MNRL-S

Introduction

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

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

JS ('landlord') appeared and testified on behalf of the landlord in this hearing. PC ("tenants") appeared and testified on behalf of the tenants in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants' agent confirmed receipt of the landlord's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the tenants were duly served with the landlord's application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent and losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This two year, fixed-term tenancy was to begin on January 1, 2019 and end on January 31, 2021. Monthly rent was set at \$2,250.00, payable on the first of the month. The tenants paid a security deposit in the amount of \$1,125.00, which the landlord still holds.

It was undisputed by both parties that the tenants had decided to cancel the tenancy before even moving in.

The landlord is requesting monetary compensation as follows:

Loss of Rent for January 2019	\$2,250.00
Loss of Rent for February 2019	2,250.00
Total Monetary Award Requested	\$4,500.00

The landlord testified that they were able to mitigate their losses by reposting the unit for rent as soon as confirming the cancellation of the tenancy agreement, and found a new tenant for the same monthly rent as of March 1, 2019. As a result of the early end of this fixed-term tenancy, the landlord suffered a monetary loss for the months of January and February 2019.

The tenants' agent testified that she was unaware her parents had signed the tenancy agreement, and in December of 2018, shortly before the tenancy was to begin, her father's health had changed, and was deteriorating rapidly. The tenants' agent testified that they had approached the landlord on December 31, 2018, but the landlord was not agreeable to mutually end this tenancy. The tenants felt that they had little choice but to end this tenancy as early as possible to mitigate future losses as the health of both parents were deteriorating.

The tenants' do not feel that the landlord is justified in claiming the losses above as they feel that the landlord failed to mitigate their exposure to losses by prioritizing the re-rental of this particular rental unit. The tenant's agent testified that a friend had inquired about available units in the building, but was not shown this unit. The tenant also questioned the landlord why this specific unit was not mentioned in the title of the online advertisement. The landlord's agent responded that as this was a brand new development with multiple vacant units, and their priority was to fill every vacant unit, including this one. The landlord testified that their practice was to show prospective tenants all vacant units. The landlord testified that they had full-time staff on site whose main role was to rent out these units, and that the allegations by the tenants were false and inaccurate. The landlords testified that they had multiple online advertisements, and it is a highly likely that when the friend had inquired that the unit was already re-rented. The landlord emphasized that it was his job to fill the vacancies.

The tenants also feel that the landlord did not fulfill their obligation under the tenancy agreement. The tenants testified that they were offered an incentive of free rent for the first month, but the landlord did not honour this agreement. The landlord does not

dispute that this was an incentive that was given to the tenants, but testified that the tenants had revoked their right to the incentive as this incentive was offered for signing a 2 year term agreement, and the tenants had decided to cancel the tenancy, and are therefore not entitled to the incentive.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

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.

While I am sympathetic towards the tenants that the circumstances had changed so drastically that they felt that they had little choice but to end the fixed-term tenancy, they did not end it in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenants obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenants in regards to this tenancy. It was undisputed that the tenants had ended this tenancy before it was to even begin.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants vacated the rental unit contrary to Sections 44 and 45 of the *Act*. I must now consider whether the landlord is entitled to the losses claimed.

The evidence of the landlord is that they had advertised the unit for rent as soon as possible, and were able to re-rent the unit for the same monthly rent for March 1, 2019. The tenants feel that the landlord did not give priority to their rental unit, and therefore failed to mitigate their exposure to losses. Furthermore, the tenants feel that they should be waived a month's rent as per the agreement when the tenants had signed the 2 year tenancy agreement.

I accept the landlord's testimony that they had made an effort to mitigate the tenants' exposure to the landlords' monetary loss of rent for the remainder of the tenancy, as is required by section 7(2) of the *Act*. I find that the considering the circumstances, where the agent's main role was to fill all the vacancies in this brand new building, the tenant's rental unit was re-rented within a reasonable amount of time, which supports the agent's testimony that the tenants' rental unit was not excluded or given any less priority over any other vacant units. I find that the landlords' evidence and testimony supports their efforts to mitigate the losses associated with the early termination of this tenancy.

I find that the tenants did not fulfill their obligations under this tenancy agreement, and therefore the tenants are not entitled to the monetary incentive offered by the landlord for signing the two year agreement. Based on these findings, I allow the landlord's monetary claim of loss of rental income for the months of January and February 2019.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was successful in their application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenants' security deposit of \$1,125.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Conclusion

I issue a Monetary Order in the amount of \$3,475.00 in the landlord's favour as set out in the table below. I allow the landlord to retain the tenants' security deposit in satisfaction of their monetary claim.

Loss of Rent for January 2018	\$2,250.00
Loss of Rent for February 2019	2,250.00
Recovery of Filing Fee	100.00
Less Security Deposit	-1,125.00
Total Monetary Award	\$3,475.00

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) 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: July 9, 2019

Residential Tenancy Branch