



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 01, 2019 (the “Application”). The Landlord sought compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Landlord and Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord provided the full legal name of Landlord K.A. and this is reflected in the style of cause.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to compensation for monetary loss or other money owed?
2. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

The Landlords sought \$1,100 in compensation for loss of rent for March 01 to 14, 2019.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started July 26, 2018 and was for a fixed term ending July 31, 2019. Rent was \$2,200.00 per month due on the first day of each month.

The Landlord testified as follows. The Tenant entered into a one-year lease. The Tenant sent an email January 08, 2019 breaking the lease early. She re-listed the unit January 10, 2019 for \$2,200.00 per month. She did not indicate a specific term on the listing. She had vacation planned for two weeks starting February 04, 2019. She checked her email and phone while on vacation for any calls or emails about the listing. She believes there were three showings of the unit. The people who came to look at the unit were not interested in it because it was too small for them. She told the people who came to look at the unit that they could rent it month-to-month, for a six-month term or one-year term.

The Landlord further testified as follows. A tenant took the unit for March 15, 2019 even though they originally wanted it for April 01, 2019. She re-rented the unit for \$2,200.00 per month but \$1,100.00 for March. The new tenant signed a one-year lease. The Landlords are seeking \$1,100.00 as half the monthly rent lost for March 01 to 14, 2019.

The Landlord submitted that the Tenant gave notice January 08, 2019 so was responsible to pay February rent and did pay February rent. The Landlord testified that the Tenant did not pay March rent.

The Landlords submitted the Tenant's email dated January 08, 2019 ending the tenancy.

The Tenant acknowledged she breached the tenancy agreement. She said she does not know if she breached the *Residential Tenancy Act* (the "Act").

The Tenant testified as follows. She thought the Landlords were only looking for a six-month rental given their correspondence. Nothing was included in the rent so she was concerned about who would choose to rent it for six months. There were units for rent at the same time that were bigger, as nice and cheaper than the rental unit. There was another unit in the same building that came available when the rental unit did and it was

re-rented before the rental unit was. Her issue was not having control over the re-renting process. Other comparable units were renting faster because they were cheaper. She tried to assist in re-renting the unit by keeping the unit spotless and leaving it furnished so it would show better. She also sent the listing to people she knew.

In her written materials, the Tenant states that she paid full rent for February and March. However, at the hearing, the Tenant did not know whether she had paid March rent. The Tenant attempted to find records of this during the hearing but was unable to.

I asked the Tenant for her position about the Landlord's evidence regarding re-listing and re-renting the rental unit. She said she had no comment about this.

In reply, the Landlord submitted that the other units that were renting in the area were older and of a different calibre than the rental unit.

I have reviewed the Tenant's written submissions and do not find that they add relevant points to the above.

The Tenant submitted rental ads for other units showing the rent amounts and what was included. The Tenant submitted text messages between her and the Landlord.

Analysis

Section 7(1) of the *Act* states that a party that does not comply with the *Act* must compensate the other party for damage or loss that results. Section 7(2) of the *Act* states that the other party must mitigate the damage or loss.

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.

Tenants can end a tenancy by giving notice in accordance with section 45 of the *Act*. Section 45(2) of the *Act* 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.

[emphasis added]

There is no issue that this was a fixed term tenancy ending July 31, 2019. Nor is there an issue that the Tenant ended the tenancy early via email on January 08, 2019. I find the Tenant breached section 45(2) of the *Act* by ending the fixed term tenancy early. There is no evidence before me that section 45(3) of the *Act* applies.

I accept the testimony of the Landlord that she did not re-rent the unit until March 15, 2019 and that she re-rented it for \$2,200.00 per month but \$1,100.00 for March. There was nothing about the Landlord's testimony that caused me to question her reliability or credibility in this regard. Nor did I understand the Tenant to dispute these points. I find the Landlords lost \$1,100.00 in rent for March 01 to 14, 2019 due to the Tenant's breach of section 45(2) of the *Act*.

I accept the testimony of the Landlord in relation to re-listing the rental unit January 10, 2019. The text messages submitted seem to support this as the Landlord texted the Tenant about showing the unit January 13, 2019. There was nothing about the Landlord's testimony that caused me to question her reliability or credibility in this regard. Nor did I understand the Tenant to dispute this. I find the Landlords re-listed the unit soon after receiving the Tenant's notice and thus minimized their loss in this regard.

The Tenant raised an issue in relation to the rent amount sought. I do not accept that the Landlords failed to minimize their loss by listing the rental unit for the same amount of rent the Tenant was renting it for. The Landlords were entitled to list the unit for this amount as this is the amount they were losing each month due to the Tenant's breach. This is not a situation where the rental unit was on the market for a number of months without the Landlords reducing the rent amount sought which may have led to a finding that the Landlords failed to minimize their loss. I also note that, if the Landlords had re-rented the unit for less, the Tenant would have been liable to pay the difference for the remainder of the term.

The Tenant raised an issue in relation to the term the Landlords were seeking. I accept the Landlord's testimony that she did not specify a term in the listing and that she told prospective tenants they could rent month-to-month, for six months or for a year. I also accept the Landlord's testimony that she re-rented the unit for one year. There was nothing about the Landlord's testimony that caused me to question her reliability or credibility in this regard. Nor did I understand the Tenant to dispute these points. Therefore, I do not find it relevant to the issues before me that the Tenant thought the Landlord wanted a six-month term and had concerns about this given nothing was included in the rent.

In the circumstances, I am satisfied the Landlords took reasonable steps to minimize their loss.

I accept the Landlord's testimony that the Tenant did not pay rent for March. The Tenant states in her written materials that she did pay for March. However, the Tenant acknowledged at the hearing that she did not know if she paid for March. Further, the Tenant attempted to find documentation regarding this during the hearing and could not do so. The Application clearly states that the Landlords are seeking lost rent for March 01 to 14, 2019. The Tenant did not submit any evidence prior to the hearing showing she paid rent for March. I acknowledge that the Landlords have the onus to prove the

claim. I am satisfied the Landlords have proven it based on the testimony of the Landlord, which raised no concerns about reliability or credibility, and the position of the Tenant at the hearing that she does not know if she paid rent for March.

Given the above, I am satisfied the Landlords are entitled to compensation in the amount of \$1,100.00 as loss of rent for March 01 to 14, 2019.

Given the Landlords were successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlords are entitled to \$1,200.00. The Landlords are issued a Monetary Order in this amount.

Conclusion

The Landlords are entitled to \$1,200.00 in compensation. The Landlords are issued a Monetary Order in this amount. This Order must be served on the Tenant. If the Tenant fails 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: July 03, 2019

Residential Tenancy Branch