



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence.

The tenants did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional ten minutes to allow the tenants the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenants were provided.

The landlord provided affirmed testimony that the landlord served the tenants individually with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on March 22, 2019 and deemed received by the tenants under section 90 of the *Act* five days later, that is, on March 27, 2019

The landlord provided the Canada Post Tracking Numbers in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the landlord served the tenants with the Notice of Hearing and Application for Dispute Resolution on March 27, 2019.

Issue(s) to be Decided

Is the landlord entitled to the following?

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

This month-to-month tenancy began on June 21, 2018. Monthly rent was set at \$4,250.00, payable on the 21st day of each month. The landlord submitted a copy of the lease. The unit is a 4-bedroom single residence.

The landlord testified that the tenants vacated on October 1, 2018 with the assistance of bailiffs pursuant to an order of possession. The landlord submitted as evidence a copy of the bailiff’s report.

This is the third arbitration between the parties; reference to file numbers of the previous arbitrations appear on the first page of this decision.

The landlord testified that he was granted an Order of Possession after an *ex parte* direct request proceeding held on September 17, 2018.

The landlord subsequently obtained a monetary order in a decision dated March 13, 2019 which included rent from September 20 to October 20, 2018. The landlord was authorized to apply the security deposit of \$2,125.00 to the award leaving a final monetary order of \$5,185.23. At that time, the landlord did not request reimbursement of rent for an additional month, that is, from October 20, 2018 to November 20, 2018 based on his inability to rent the unit during that time.

The landlord claimed compensation in this hearing in the amount of \$4,250.00 for one month’s rent from October 20, 2018 to November 20, 2018.

The landlord stated that he made every effort to mitigate his damages and advertised diligently on rental web sites for a replacement tenant as soon as the unit was available on October 1, 2018. The landlord testified that there were a substantial number of inquiries about the unit and he showed the unit as frequently as possible to prospective tenants. However, despite his best efforts, the landlord testified he was unable to rent

the unit, and then only at a reduced rent of \$3,750.00, in mid-December 2018. The landlord submitted a copy of the new tenancy agreement as evidence.

In support of his testimony, the landlord submitted a copy of the online advertisement, a copy of a screen shot of his inbox showing a considerable number of inquiries about the unit, to which he testified he responded individually and in a timely manner.

The landlord claimed a monetary award for one month's rent of **\$4,250.00** as compensation for loss of rental income from October 21, to November 21, 2018. The landlord also requested an award of \$100.00 for reimbursement of the filing fee.

Analysis

The landlord's testimony and evidence were uncontradicted by the tenants who did not attend the hearing. I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the person who incurred the damage or loss in the same position as if the damage or loss had not occurred. The person claiming compensation must establish **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. Everything reasonable was done to reduce or minimize (mitigate) the amount of the loss or damage as required under section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. In this case, the onus is on the landlords to prove the landlord is entitled a claim for a monetary award.

I accept the landlord's evidence as supported by the previous referenced decisions, that the landlord obtained vacant possession of the unit after obtaining an order of possession which was enforced by bailiffs on October 1, 2019.

I accept the landlord's uncontradicted evidence and find that as soon as the unit was vacant, the landlord made reasonable efforts without delay to find a replacement tenant.

I accept the landlord's evidence and find that the landlord was unable despite diligent efforts to find a suitable replacement tenant for the unit as a result of which the rental for the unit was lowered from \$4,250.00 to \$3,750.00.

I accept the landlord's evidence and find that the unit was vacant until mid-December, more than two months after the tenants vacated upon enforcement by the bailiffs of the order of possession.

I accept the landlord's evidence and find that the landlord incurred a loss in rental income from October 20, 2018 to November 20, 2018 because of a direct violation by the tenants of their obligations to pay rent under the *Act* and the tenancy agreement.

In considering the issue of mitigation, that is, the landlord's efforts to reduce the landlord's losses, I have considered *Policy Guideline # 3 – Claims for Rent and Damages for Loss of Rent* which provides guidance on the landlord's obligations to take reasonable steps to reduce losses. The Guideline states in part as follows:

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

I accept the landlord's testimony as uncontradicted and credible, as well as supported by his submitted documents including advertisements and a screen shot of his inbox, that he advertised the unit as soon as possible, that is, when the tenants vacated on October 1, 2019 and took all reasonable steps to reduce losses, including by re-renting the unit at an economic reduce rent.

In conclusion, I find that the landlord has met the burden of proof on a balance of probabilities that the landlord is entitled to a monetary award for compensation for loss of rent from October 20, 2018 to November 20, 2018 in the amount of \$4,250.00.

As the landlord has been successful in this application, I grant the landlord a monetary award for reimbursement of the filing fee in the amount of \$100.00.

I therefore grant the landlord a monetary order of **\$4,350.00**.

Conclusion

The landlord is entitled to a monetary order in the amount of **\$4,350.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) to be 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 04, 2019

Residential Tenancy Branch