



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants and landlord P.M. (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord served the tenants with a copy of his application for dispute resolution via registered mail; however, neither party knew on what date. I find that the tenants were served with the landlord's application in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

Tenant M.R. testified that the shortened version of his first name was listed on the landlord's application for dispute resolution. Pursuant to section 64 of the *Act*, I amend the landlord's application to state the full version of tenant M.R.'s first name.

Issues 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 a Monetary Order for damage or compensation, pursuant to section 67 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 both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2018 and ended on January 29, 2019. This was originally a fixed term tenancy set to end on August 31, 2019. Monthly rent in the amount of \$1,550.00 was payable on the first day of each month. A security deposit of \$775.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that the tenants emailed the landlord at the end of December 2018 and informed him that they were moving out of the subject rental property at the end of January 2019 and that they were interested in subletting the subject rental property. The landlord responded via email that while subletting was an option, he preferred to find a new a tenant himself. The aforementioned e-mails were not entered into evidence; however, the landlord read them aloud during the hearing and the tenants agreed to their content.

The tenants testified that they had taken the above e-mails to mean that they were not permitted to sublet the subject rental property. The tenants testified that they did not know their rights regarding subletting at that time and should have spoken with the Residential Tenancy Branch. The tenants testified that they ended the tenancy because they split up.

Both parties agree that on January 8, 2019 the tenant provided the landlord with written signed notice of early termination of the lease. The landlord testified that a day or two later he put up advertisements for the subject rental property which were regularly renewed on various websites. The landlord entered into evidence receipts for same totalling \$300.20. The landlord is seeking reimbursement of this amount from the tenants.

The landlord testified that it was difficult to find new tenants during the winter, but he was able to find new tenants for March 16, 2019. The landlord testified that he advertised the subject rental property for the same rental rate paid by the tenants but was not able to rent it out for that rate. The new tenants who moved into the subject rental property on March 16, 2019 offered to pay the landlord \$1,450.00 per month in rent. The landlord accepted as he did not want to leave the property vacant longer than it already was.

The landlord testified that he hired a property manager to conduct the viewings of the subject rental property. Four viewings occurred while the subject rental property was advertised for rent. The landlord testified that he paid his property manager \$25.00 per viewing for a total of \$100.00. The landlord entered into evidence an e-mail from the landlord's property manager to the landlord dated March 13, 2019 setting out the amount the landlord owed her for conducting the viewings. The landlord is seeking \$100.00 from the tenants for the cost of conducting the viewings.

Both parties agreed that the tenants authorized the landlord in writing to retain their entire security deposit in the amount of \$775.00 for half of February 2019's rent. Both parties agree that the tenants paid the landlord \$775.00 for the remainder of February 2019's rent. The landlord testified that he is seeking the tenants to pay for lost rental income from March 1, 2019- March 15, 2019 in the amount of \$775.00. The landlord testified that he is also seeking the difference between the rent he would have received over the course of the tenants' tenancy agreement and what he will receive from the new tenants over the same period of time, in the amount of \$550.00.

The tenants testified that they do not believe they should have to pay for the above charges because they do not believe the landlord did enough to find new tenants for the subject rental property because he lives in another province and there were only four viewings of the subject rental property prior to new tenants being found.

The landlord testified that he diligently advertised the subject rental property for rent on numerous websites and followed up with all prospective renters via text, email and telephone.

Both parties agree that the tenants overpaid electricity owed to the landlord. Both parties agree that the landlord owes the tenants \$67.32 for overpaid electricity.

Analysis

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.

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

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. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

In this case, the tenants ended a one-year fixed term tenancy early; thereby decreasing the rental income that the landlord was to receive under the tenancy agreement for the months of February to August 2019. Pursuant to section 7, the tenants are required to compensate the landlord for that loss of rental income. However, the landlords also have a duty to minimize that loss of rental income by re-renting the unit at a reasonably economic rate as soon as possible.

I find that the landlord received written notification of the tenant's intention to vacate the subject rental property on January 8, 2019. I find that within two days the landlord started advertising the subject rental property for rent. I find that the landlord advertised the subject rental property on several websites. I accept the landlord's evidence that he pursued all the leads from the advertisements he posted. I find that the landlord's efforts to re-rent the subject rental property were reasonable in the circumstances. I find that the landlord mitigated his loss.

Pursuant to section 7 of the *Act*, I find that the tenants are required to compensate the landlord for loss of rental income from March 1- March 15, 2019 in the amount of \$775.00. I find that the tenants are required to compensate the landlord for the difference between what he would have received from the tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy, pursuant to Policy Guideline #3. The landlord will receive \$100.00 per month less for the subject rental property for the months of April – August 2019 and \$50.00 less for the month of March 2019, for a total of \$550.00. I find that the tenants are responsible for this loss.

I find that the landlord incurred the advertising expenses in the amount of \$300.20 and viewing expenses in the amount of \$100.00 because the tenants breached their fixed term tenancy agreement. I find that pursuant to section 7 of the *Act*, the tenants are responsible for this loss incurred by the landlord.

Based on the testimony of both parties, I find that the landlord owes the tenants \$67.32 for overpaid utilities.

As the landlord was successful in his application, I find that he 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 landlords under the following terms:

Item	Amount
Loss of rental income: March 1-15, 2019	\$775.00
Difference in rental income	\$550.00
Advertising costs	\$300.20
Viewing costs	\$100.00
Filing Fee	\$100.00
Less overpaid electricity	-\$67.32
TOTAL	\$1,757.88

The landlords are 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: July 16, 2019

Residential Tenancy Branch