Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

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

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:44 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's community leader (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing.

The landlord testified that the tenant was served the notice of dispute resolution package by registered mail on May 1, 2019. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The landlord also entered into evidence a Canada Post delivery confirmation printout which states that the tenant signed for the package on May 5, 2019. I find that service of the landlord's application for dispute resolution was effected on the tenant on May 5, 2019.

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 recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following disputed testimony. This tenancy began on August 20, 2018 and ended on December 12, 2018. This was originally a fixed term tenancy set to end on August 31, 2019. Monthly rent in the amount of $1,635.00 was payable on the first day of each month. A security deposit of $780.00 and a pet damage deposit of $250.00 were paid by the tenant to the landlord. The landlord has not returned any of the above deposits to the tenant. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on November 26, 2018 the tenant e-mailed the landlord and informed the landlord that she was vacating the subject rental property on December 15, 2018 and wished to have her tenancy agreement assigned. The November 26, 2019 e-mail was entered into evidence.

The landlord testified that an agent of the landlord responded to the November 26, 2018 e-mail on November 27, 2018. The November 27, 2018 letter states that the November 26, 2018 e-mail does not constitute proper notice and that proper notice must be provided in writing. The November 27, 2018 letter goes on to state the steps the tenant is required to take to have her apartment assigned.

The landlord testified that the tenant did not take any of the steps outlined in the November 27, 2018 letter. The landlord testified that the tenant did not have further contact with the landlord until December 12, 2018 when the tenant provided her keys to the landlord and requested a move out condition inspection report be completed.

The landlord testified that the tenant participated in the move out condition inspection report on December 12, 2018 and provided her forwarding address in writing to the landlord on the December 12, 2018 move out condition inspection report. The move out condition inspection report was entered into evidence.

The landlord testified that the subject rental property was advertised for rent as soon as the tenant moved out. The landlord testified that the subject rental property was not advertised sooner as the tenant did not respond to the November 27, 2018 letter or provide proper written notice of her intention to vacate the subject rental property. The landlord testified that she did not know if the tenant still wanted to break the fixed term lease after the tneant received the November 27, 2018 letter.

The landlord testified that the subject rental property was advertised on several websites at the same rental rate as paid by the tenant. A new tenant did not move into the subject rental property until mid-April 2019. The landlord testified that the tenant did not pay December 2018's rent. The landlord testified that she is seeking December 2018 and January 2019's rent in the amount of $3,270.00 from the tenant.

The landlord testified that a previous application for this claim was filed with the Residential Tenancy Branch but due to a scheduling issue, the landlord did not attend the hearing. The landlord entered the Decision dated April 12, 2019 into evidence which states that neither party attended the hearing and the landlord's claim was dismissed with leave to reapply. The tenant's initial application was filed on December 21, 2018. This current application was filed on April 17, 2019.

Analysis

Monetary Claim

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 Residential Tenancy 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.

Residential Tenancy Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act, 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.

Residential Tenancy 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. The earliest time the tenant could legally have ended the tenancy was August 31, 2019.

In this case, the tenant ended a one-year fixed term tenancy early; thereby decreasing the rental income the landlord was to receive under the tenancy agreement. Pursuant to section 7, the tenant is required to compensate the landlord for that loss of rental income. However, the landlord also has 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 acted reasonably in waiting to market the subject rental property for rent until the tenant moved out because the tenant did not provide written notice to end tenancy or respond to the November 27, 2018 letter. I note that e-mail is not a recognized method of service under section 88 of the *Act.* I find that the landlord mitigated its losses by marketing the subject rental property on several websites at the same rental rate the tenant paid.

Pursuant to Residential Tenancy Policy Guideline 3 and section 7 of the *Act*, I find that the tenant is responsible for the landlord’s loss of rental income for January 2019.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act,* I find that the tenant was obligated to pay the monthly rent in the amount of $1,635.00 on the first day of each month. Based on the testimony of the landlord I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord $1,635.00 in unpaid rent for December 2018.

As the landlord is successful in this application, I find that it is entitled to recover the $100.00 filing fee from the tenant, pursuant to section 72 of the *Act.*

Security Deposit

Section 38 of the Act requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the Act, equivalent to double the value of the security deposit.

The landlord's initial application was made within 15 days of the end of the tenancy; however, this application was dismissed. When an application is dismissed with leave to reapply, the timelines set out in the *Act* are not extended. The date the landlord's original application was filed has no bearing on this current application.

In this case, the landlord did not return the tenant's security and pet damage deposits or file this application within 15 days of the end of this tenancy. Therefore, pursuant to section 38(6)(b) of the *Act,* the tenant is entitled to receive double her security deposit and pet deposit as per the below calculation:

$780.00 (security deposit) * 2 (doubling provision) = $1,560.00
$250.00 (pet damage deposit) * 2 (doubling provision) = $500.00
Total = $2,060.00

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find the tenant's doubled deposits are to offset the landlord's monetary award.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
December 2018 rent	$1,635.00
January 2019 rent	$1,635.00
Filing fee	$100.00
Less doubled security deposit	-$1,560.00
Les doubled pet damage deposit	-$500.00
TOTAL	**$1,310.00**

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: August 01, 2019

Residential Tenancy Branch