



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

On May 10, 2019, the Landlords applied for a Dispute Resolution proceeding seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking to apply the security deposit towards these debts pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Landlord and the Tenant attended the hearing. All parties in attendance provided a solemn affirmation.

The Landlord advised that they served the Tenant the Notice of Hearing package by registered mail on May 10, 2019 and the Tenant confirmed that she received this package. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was served the Landlords’ Notice of Hearing package.

He advised that they served their evidence to the Tenant by registered mail on August 12, 2019. The Tenant confirmed that she received this evidence on August 16, 2019, that she had reviewed it, and that she was prepared to respond to it. While service of this evidence was late and did not comply with the timeframe requirements of Rule 3.14 of the Rules of Procedure, as the Tenant had reviewed it and was prepared to respond to it, this evidence was accepted and considered when rendering this decision.

The Tenant advised that she served her evidence to the Landlords by registered mail on August 13, 2019. The Landlord confirmed that they received this evidence on August 14 or 15, 2019, that they had reviewed it, and that they were prepared to respond to it.

While service of this evidence was late and did not comply with the timeframe requirements of Rule 3.15 of the Rules of Procedure, as the Landlords had reviewed it and were prepared to respond to it, this evidence was accepted and considered when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for unpaid rent?
- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to apply the security deposit towards these debts?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2019 as a fixed term tenancy until September 30, 2019. However, the tenancy ended when the Tenant gave up vacant possession of the rental unit on April 29, 2019. Rent was established at \$1,250.00 per month, due on the first day of each month. A security deposit of \$625.00 was also paid. A liquidated damages clause of \$250.00 was included in the tenancy agreement and this agreement was submitted as documentary evidence.

The Landlord advised that the Tenant provided written notice to end her tenancy on April 26, 2019, effective immediately. He stated that they took steps to mitigate this loss by immediately advertising the rental unit online. He stated that the rental unit was shown to multiple prospective tenants, that criminal record and credit checks were conducted, and that it took approximately 12.5 hours in total to find new tenants. As such, they are seeking a monetary award for compensation in the amount of **\$250.00** for the liquidated damages, as per the tenancy agreement.

The Tenant advised that the Landlords never contested the contents of her email with respect to ending her tenancy; however, she accepted the liquidated damages cost.

The Landlord advised that due to the late notice, they were only able to secure new tenants for June 1, 2019, and they submitted a copy of the new tenancy agreement as documentary evidence. He stressed the importance of finding quality tenants and while the Tenant provided a list of prospective tenants, none of those candidates qualified as suitable tenants. However, he advised that instead of seeking a full month's rent, he is only seeking a monetary award for compensation in the amount of **\$625.00** for the rental loss that was suffered.

The Tenant provided evidence of why she wanted to end her tenancy and stated that the conditions that she was subjected to living under breached the crime free addendum of the tenancy agreement, which is a material term of the tenancy. She stated that she advised the property manager of these issues; however, nothing was done to correct the issues, so she ended her tenancy for her "personal safety". She stated that she did not advise the Landlords of the issues in writing, outlining that these were a breach of a material term of the tenancy, nor was a deadline given to correct the issues. As well, she could not point to the Sections of the *Act* that allowed her to end the tenancy due to her "personal safety", although she made reference to advice she was provided by an advocate regarding family violence.

With respect to the Landlords attempting to re-rent the rental unit, she submitted that she advertised the rental unit and provided the Landlords with a list of multiple tenants that wanted to move in on May 1, 2019. She questioned the Landlords' screening on what qualifies as a quality tenant and she speculated that the Landlords discriminated against her list of prospective tenants.

Finally, the Landlord advised that they are seeking a monetary award for compensation in the amount of **\$23.55** for the cost of utilities from May 1 – 15, 2019. They submitted a copy of a utility invoice to support this claim.

The Tenant did not make any submissions with respect to this point.

All parties agreed that a forwarding address was provided by the Tenant on April 29, 2019 by text message.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 38(1) of the *Act* requires the Landlords, within 15 days of the end of the tenancy or the date on which the Landlords receive the Tenant's forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlords to retain the deposit. If the Landlords fail to comply with Section 38(1), then the Landlords may not make a claim against the deposit, and the Landlords must return the Tenant's security deposit and must pay the Tenant a monetary award equivalent to the original value of the security deposit (Section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the Tenant's provision of the forwarding address.

The undisputed evidence before me is that the Landlords received the Tenant's forwarding address on April 29, 2019. I find that this is the date which initiated the 15-day time limit for the Landlords to deal with the deposit. As the Landlords complied with the requirements of the *Act* by making their Application within this 15-day time frame of April 29, 2019, the doubling provisions do not apply to the deposit.

With respect to the Landlords' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

I find it important to note that Policy Guideline # 5 outlines a Landlords' duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Additionally, in claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions of the Legislation, the Landlords claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

With respect to the Landlords' request for liquidated damages, I find it important to note that Policy Guideline # 4 states that a "liquidated damages clause is a clause in a

tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement” and that the “amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into”. This guideline also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

Furthermore, Policy Guideline # 8 states that “To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.”

Based on the testimony before me, I am satisfied that there was a liquidated damages clause in the tenancy agreement that both parties had agreed to, and that the genuine pre-estimate of loss does not meet the tests for establishing this amount as a penalty. Furthermore, the policy guideline states that “If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.”

While it is the Tenant’s position that her submissions would constitute a breach of a material term of the tenancy agreement, I find it important to note that she did not inform the Landlords in writing that the issues she was having were a problem that she felt was a breach of a material term of the tenancy. Furthermore, she did not give the Landlords a reasonable deadline to fix this problem or advise the Landlords that she would be ending the tenancy if the problem was not fixed by the deadline.

When reviewing the totality of the evidence before me, I am not satisfied that the Tenant has substantiated that, if there was a breach of a material term of the tenancy, that she

had advised the Landlords of such. Consequently, I am not satisfied that the Tenant had justification for ending the tenancy in this manner.

Moreover, I infer from her testimony that her reference to ending the tenancy for “personal safety” is in relation to Section 45.1 of the *Act*. However, the Tenant’s situation does not meet any of the requirements of this Section to warrant ending the tenancy early.

As the Tenant did not end the tenancy in accordance with *Act*, I find that ending a tenancy with such short notice would put the Landlords in a position where efforts to re-rent the premises would be considered sufficiently more than “negligible or non-existent”. Furthermore, other than speculation, the Tenant has not provided any evidence of any discrimination on the part of the Landlords in selecting new tenants. Given that the Landlords had so little notice, and that there is an amount of due diligence required in vetting for quality tenants, I do not find it unreasonable that the Landlords were not able to re-rent for May 1, 2019. As such, I am satisfied that the Landlords mitigated their losses and that the Landlords have sufficiently established this claim. As such, I grant the Landlords a monetary award in the amount of **\$250.00** for the liquidated damages.

Regarding the Landlords’ claim for lost rent, there is no dispute that the parties entered into a fixed term tenancy agreement from April 1, 2019 ending September 30, 2019, yet the tenancy effectively ended when Tenant gave up vacant possession of the rental unit on April 29, 2019 and provided a signed, written letter ending the tenancy. Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenant must give written notice to end a tenancy. As well, this notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy.

Given that the Tenant’s notice to end the tenancy was effective for a date earlier than the end of the fixed term tenancy, and given my above findings, I am not satisfied that the Tenant ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenant gave up vacant possession of the rental unit contrary to Section 45 of the *Act*. Moreover, I find that the consistent testimony indicates that as a result of the Tenant’s actions, the Landlords did suffer a rental loss.

As above, I am satisfied from the Landlord’s testimony that they made attempts to re-rent the rental unit as quickly as possible after receiving this short notice on April 26, 2019. As they were able to re-rent the rental unit on June 1, 2019, I am satisfied that the Tenant is responsible for May 2019 rental loss. However, as the Landlords are only

seeking to recover half this month's loss, I grant the Landlords a monetary award in the amount of **\$625.00** to satisfy this debt.

Finally, with respect to the outstanding utilities, as the Tenant agreed to owing this amount, I grant the Landlords a monetary award in the amount of **\$23.55** to satisfy this debt.

As the Landlords were successful in their claims, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlords to retain the security deposit in partial satisfaction of the amount awarded.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlords

May 2019 rental loss	\$625.00
Liquidated damages	\$250.00
Utilities owed	\$23.55
Recovery of filing fee	\$100.00
Security deposit	-\$625.00
TOTAL MONETARY AWARD	\$373.55

Conclusion

The Landlords are provided with a Monetary Order in the amount of **\$373.55** 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 27, 2019

Residential Tenancy Branch