



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, 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 section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on June 4, 2019, I find that the tenant was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

On April 5 and April 7, 2018, the landlords and two co-tenants, including the tenant in this application, signed a month-to-month Residential Tenancy Agreement (the Agreement). According to the terms of the Agreement, monthly rent was set at

\$1,900.00, payable in advance by the first of each month. Although a security deposit was paid by the co-tenants, that security deposit has now been returned to the tenants, following an application by the tenant to have their portion of the security deposit returned.

Shortly after this tenancy began, the other co-tenant notified the landlord that they could not live with the tenant and discontinued living in this rental unit. At that stage, it was apparent to the landlord and the tenant's mother (the tenant's advocate at this hearing) who became involved in this matter at that stage that the tenant would be unable to continue residing in this rental unit without another co-tenant to assist in paying the other half of the monthly rent. The tenant and advocate noted that the tenant had suffered a brain injury and needed assistance from the advocate in sorting out their interactions with the landlord.

The landlords issued the tenant a 10 Day Notice to End Tenancy (the 10 Day Notice) on May 5, 2018, for unpaid rent that was then owing. Although the tenant, with assistance from their advocate/mother, was able to pay the rent for May 2019, the tenant and their advocate gave undisputed sworn testimony and written evidence that they advised the landlord throughout May 2019, that the tenant would not be able to remain in this rental unit after June 2018. The tenant and their advocate testified that they asked the landlord if there was anything formal that they had to provide to the landlords to notify them that they were ending this tenancy by June 30, 2018. While the tenant maintained that the landlord advised that nothing was required from them, the tenant did send the landlord a text message on June 1, 2018, advising of their intention to end this tenancy by June 30, 2018. The tenant vacated the rental unit by June 15, 2018 and moved elsewhere at that time; however, Landlord CW (the landlord) gave undisputed sworn testimony that the tenant retained the keys for the remainder of the month, as the tenant came by to complete cleaning the rental unit over that period. In their written evidence, the tenant confirmed that they kept the keys during this period as they entered the premises three times to finish the cleaning and to use the laundry facilities in the rental unit.

The landlords' application sought a monetary award of \$2,800.00 for unpaid rent that the landlords claimed was owing for July and August 2018. Of that amount, the landlords claimed for a whole month of unpaid rent for July 2018 of \$1,900.00, and \$900.00 for August 2018. The landlord said that they were entitled to this monetary award because the tenant did not provide a written notice to end this tenancy, noting that the text message did not satisfy this legislative requirement at the end of a tenancy.

The landlord testified that on or about August 15, 2018, they received a \$1,000.00 security deposit from the new tenant who began renting this rental unit as of September 1, 2018.

The landlord testified that they started advertising the availability of the rental unit near the end of June 2018, as they were uncomfortable attempting to show the premises to prospective tenants while the tenant was still in possession of the keys. The landlord also maintained that they were still unsure at that time as to whether the tenant truly intended to end this tenancy as they had not received a written notice to end this tenancy from the tenant. The landlord said that they posted advertisements in the usual places that they had used to attract tenants before, including in a laundromat, in libraries and at a local hospital. The landlord did not enter into written evidence copies of any of these advertisements. The landlord also gave sworn testimony that they placed an advertisement on a popular rental website, but produced no further details as to when this advertisement was placed nor a copy of that advertisement. The landlord estimated that they showed the rental unit to about 15 people before they were able to secure new tenants; they provided no further details regarding these showings. The landlord said that the person who eventually rented the premises first viewed the rental suite in mid-July 2018. The landlord said that they found this process "very stressful" due to the tenant's behaviours, noting that this was only the second time they had rented the premises to tenants. The landlord said that they could not afford to lose rent from this property as they were using this dwelling to assist them with their mortgage for the adjacent home where the landlords reside. The landlord gave sworn testimony and written evidence that they wanted to be comfortable with the tenants they were renting to as a result of the situation they encountered with the co-tenants in this tenancy, including the tenant's threatening behaviours.

In their written evidence, the tenant and the advocate maintained that during a November 2018 hearing of the tenant's application to obtain a return of their security deposit, the arbitrator presiding over this matter questioned the landlord as to why the landlord waited so long to try to re-rent the rental premises to another tenant. The tenant provided undisputed written evidence that the landlord responded to the effect that "I was just tired and fed up with the A and R (the co-tenants) situation and wanted to wait awhile before I found tenants that I really wanted. I was busy with other stuff." They maintained that the landlord had clearly advised them that there was no need to issue a written notice to end this tenancy, as the landlord was fully aware that the tenant would be leaving by the end of June 2018. Their written evidence questioned why it

took the landlord until mid August 2018 to find a tenant willing rent this space for September 1, 2018.

In another portion of their written evidence, the tenant provided the following description of the landlord's delay in attempting to seek out another tenant for this rental unit:

...C. (the landlord) did not want to rent out the space right away when I moved out, she had shown it at least one time while I was still there in June but had told myself and my Mom that she was busy with her daughter's graduation and was leaving town for the first week of July with J (the other landlord) and their children. Lack of Written Notice did not cause nor contribute to C's monetary loss of rent for the month of July and partial August. C. was not eager to find new tenants until the end of summer as she verbalized such to both myself and my Mom...

The tenant and their advocate also commented on written evidence provided by the landlord at the previous hearing noting the following;

...C (the landlord) admits she purposefully chose to leave the duplex vacant for the month of July, blaming A and R (the co-tenants) for an "unsettling experience" this document demonstrates she was well aware she could have rented out the unit in July if she had wanted to...

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for July 2018,

the tenant would have needed to provide their notice to end this tenancy before June 1, 2018. Section 52 of the *Act* requires that a tenant provide this notice in writing. Whether or not the landlord had been given oral notification of the tenant's intention to end this tenancy by June 30, 2018 before June 1, 2018, the tenant's text message of June 1, 2018 does not qualify as notice in writing. In addition, this text message was not provided before June 1, 2018, as would have been required in order to release the tenant from any responsibility to pay rent for July 2018. For these reasons, I find that the tenant did not comply with the provisions of section 45(1) of the *Act* and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* also places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

In this case, there is undisputed sworn testimony and written evidence from the tenant and their advocate that the landlord did commence trying to locate another tenant for this rental unit while the tenant was still residing in the rental unit prior to June 15, 2018. On this point, the tenant's written evidence confirmed that at least one showing of the rental unit did occur during this period. However, with the exception of this one showing, the tenant and their advocate raised questions in their written evidence that alerting the landlords to be prepared to demonstrate the measures the landlords had taken to mitigate the tenant's exposure to the landlords' loss of rent. The landlord produced nothing in writing in the form of advertisements, and had few details to document the extent to which the landlord tried to re-rent this rental unit. They were unable to refer to exact locations, other than a bulletin board at a local hospital, where they placed advertisements. They provided no details as to the contents of these advertisements or even how much monthly rent they were asking from prospective tenants. Although they claimed to have placed an advertisement on a local rental website, they had no details with respect to when that advertisement was placed, how long it was listed for, how much rent was being sought, or how much response they received from that advertisement. They provided no list of showings of the premises to prospective tenants, although they claim to have shown the premises to about 15 people. The landlord also admitted that they found the process of having rented to the co-tenants very stressful, and were exercising a lot of caution in who they rented to again, based on how the rental to the two co-tenants had ended.

The landlord was given a full opportunity to question anything that the tenant and their advocate entered into written evidence, including the allegations noted above regarding the landlords' delay in engaging in the process of locating new tenants. The landlord did not question any of the statements attributed to the landlord by the tenant with respect to the extent to which the landlord attempted to find new tenants to take possession of the premises in July or August.

In considering the landlords' claim for unpaid rent, I find no basis whatsoever whereby the landlords would be entitled to a monetary award for unpaid rent owing for August 2018. This was a month-to-month tenancy, and any entitlement the landlords would have to unpaid rent due to the late notification by the tenant and the failure of the tenant to provide that notice in writing would be limited solely to July 2018,. Even though the tenant retained the keys for this rental unit until June 30, 2018, the landlord knew fully by the time that the keys were provided on that date that the tenant had not been living in the rental unit since mid-June. Thus, any entitlement that the landlords might have would expire on July 31, 2018, one month after the tenancy ended.

While there is evidence that at least by mid-August 2018, the landlord was actively attempting to find a new tenant, the landlord has provided little evidence other than their sworn testimony to demonstrate that genuine and continuous efforts were being undertaken by the landlords to re-rent these premises for the month of July 2018. Although the tenant confirmed that someone did come to the rental unit to view it prior to June 15, 2018, the landlord produced no details on any other viewings they arranged during June 2018, when they clearly knew since the beginning of the month, and earlier that the tenant was not planning to remain there after June 30, 2018. I find that the landlords have failed to address any of the tenant's allegations attributed to the landlord as noted above, with respect to the efforts taken by the landlord to re-rent the premises. This failure calls into serious question the extent to which the landlords have demonstrated that they have taken adequate steps to mitigate the tenant's exposure to the landlords' loss of rent for July 2018. Rather, it seems that the landlord mistakenly relied on the tenant's contravention of the rules on how a tenant can end a tenancy and produced little to demonstrate their mitigation of the tenant's exposure to the landlords' loss of rent for July 2018. While a landlord need not accept the first person who expresses interest in renting premises, a landlord does need to provide significantly more detailed evidence to demonstrate that true and genuine efforts have been taken to mitigate a tenant's exposure to the landlords' loss of rent.

Under these circumstances and since the burden of proof rests with the party applying for a monetary claim, I find that the landlords have not adequately addressed the concerns raised by the tenant and the tenant's advocate about the extent to which the landlords took reasonable steps to re-rent the premises for July 2018. For these reasons, I find that the landlords have failed to discharge their duties under section 7(2) of the *Act* to minimize the tenants' exposure to the landlord's loss of rent for July 2018. I dismiss the landlords' application. As the landlords have been unsuccessful in their application, I make no order enabling them to recover their filing fee from the tenant.

Conclusion

The landlords' application is dismissed without leave to reapply.

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: September 17, 2019

Residential Tenancy Branch