



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCL-S & FFL

Introduction

The Application for Dispute Resolution filed by the landlord seeks the following:

- a. A Monetary Order in the sum of \$20,859 for loss or rent.
- b. An Order to retain the security deposit.
- c. An Order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution and Notice of Dispute Resolution Hearing was served on the Tenant by mailing, by registered mail to where the Tenant resides on June 19, 2019. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a fixed term written tenancy agreement that provided that the tenancy would start on August 7, 2018 and end on August 31, 2019. The rent was \$4800 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$2400 at the start of the tenancy.

The tenancy agreement included the following provision:

“Tenant acknowledges that should notice of intent to vacate be given for a time earlier than the end of the lease period, they will be held liable for any re-leasing costs incurred by the landlord including any vacant period. The Landlord acknowledges that all reasonable efforts will be made to re-lease the property as quickly as possible.”

On October 31, 2019 the tenant's son was seriously injured from a fall from the second floor of the rental unit.

On November 4, 2018 the tenant gave the landlord notice in writing that he/she would be terminating the tenancy agreement at the end of November because her son had been seriously injured and the doctors recommended that she should find alternative accommodation.

The landlord and Tenant conducted a move-out inspection on November 19, 2018.

The landlord testified she was unable to rent the rental unit until March 20, 2019. The new tenant took possession on that date at a reduced rate of \$4200 per month.

The landlord claims for loss of rent for the remaining portion of the fixed term. In particular the landlord claims the following:

- Loss of rent for December 2018, January 2019, February 2019 until March 20, 2019 of \$17,496.77
- Reduced rent starting March 20, 2019 to the end of the fixed term \$3212.90.

The landlord failed to give the Tenant notice in writing that the landlord would be claiming for loss rent for the unexpired portion of the fixed term. She testified that she orally told the tenant that the landlord would be making this claim at the time the parties participated in a post tenancy inspection. The tenant denies this testifying that at no time did the landlord advise the tenant that the landlord would be claiming for loss of rent for the unexpired portion of the fixed term.

The tenant gave the following evidence:

- On August 7th, 2018 the tenant signed the fixed term contract.

- On October 30th, 2018, she received phone call that her son was in the hospital and was seriously injured because of a fall from the second floor of the house. He was in ICU. The doctor said he can't live by himself and the injury was really bad. He stayed in the hospital for a week. The doctor said the injury is threatening his life. His spine was broken and he needs 24/7 intensive care.
- Her son was so nervous and scared to recall what happened in the place, and doctor advised me to take him to an environment to stay away from the house where he got injured . That way is better to get him calm down.
- On November 4, 2018. I sent the notice to the Landlord and advise him that I have to end the lease since this incident happen and my son needs at least half a year to recover. We couldn't fulfill the lease term. On November 15, 2018, I sent formal request again to the landlord and the property owner and ask them to end my tenancy by the end of November. I advised them that I will fix the damage and clean the house on November 15, 2019. I have attached the evidence that I hired the contractor fixed the damage and on November 19, 2019 I hired the cleaning to clean the house (invoice attached).
- The Landlord and I did the move out inspection on November 19, 2019 and I handed in all the keys to them. Everything was in good condition. I did not agree the landlord could keep my deposit. But he refused to return my deposit. I paid the rent until of November 30, 2019.
- They landlords were not actively looking for a tenant after she informed them that I have to end the lease.

The Law:

Section 7(2) of the Residential Tenancy Act provides as follows:

Liability for not complying with this Act or a tenancy agreement

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline #13 includes the following:

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 loss¹. 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.

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The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. **The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation (my emphasis).**

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Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent. Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable.

Analysis - Monetary Order and Cost of Filing fee

Where a tenant enters into a fixed term tenancy and subsequently terminates the tenancy before the end of the fixed term the tenant is responsible to pay the rent to the landlord for the unexpired portion of the fixed term subject to the landlord's obligation to act reasonably to lessen his loss and provided the landlord gives the tenant notice that they intend to claim for the unexpired portion of the fixed term.

In this case the landlord failed to prove they gave notice of their intention to claim for the remainder of the fixed term at the time the tenancy came to an end. However, the tenancy agreement contained a clause which is set out above that provided that "...they will be held liable for any re-leasing costs incurred by the landlord including any vacant period." Policy Guideline 3 provides notice is the tenancy agreement is sufficient notice.

The landlord is to use reasonable efforts to find another tenant once the tenant has come to an end. The representative of the landlord testified they advertised on Craigslist and their own site but her evidence was not specific. The landlord failed to provide documentary evidence to prove this testimony. The representative of the landlord was not sufficiently specific as to what efforts were made to advertise, when they advertised, whether there were prospective tenants who inquired of the rental unit, whether they conducted any showings etc.

The tenancy ended at the end of November. I took notice that it is more difficult to rent during the Christmas period. In the circumstance I determined the tenant is responsible to pay for the first two months the rental unit was vacant or the sum of \$9600. I dismissed the claim for the balance of the claim for the unexpired portion of the fixed term and the rental difference as I determined the landlord failed to prove they had sufficiently mitigated the loss.

I determined the landlord is entitled to \$141.74 for the metered water bill. The tenant did not dispute this evidence. I further determined the landlord was entitled to \$7.96 for 2 keys that were not returned.

In summary I determined the landlord has established a claim against the Tenant in the sum of \$9749.70.

I granted the landlord a monetary order in the sum of \$9749.70 plus the sum of \$100 in respect of the filing fee for a total of \$9849.70.

Security Deposit

I determined the security deposit plus interest totals the sum of \$2400. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$7449.70.

Conclusion:

I ordered that the landlord shall retain the security deposit of \$2400. I further ordered that the tenant shall pay to the landlord the sum of \$7449.70.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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 25, 2019

Residential Tenancy Branch