



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDCL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

CT appeared as agent for the landlord (“the landlord”). The landlord testified that the tenant JB had informed the landlord she is out of the country; the landlord informed JB she would not proceed in the application against the respondent JB today. Accordingly, as instructed by the landlord, the claim against JB is dismissed with leave to reapply.

JF attended as advocate for GG who also attended (“the tenant”). The hearing process was explained, and an opportunity was given to ask questions. Each party had the opportunity to call witnesses and present affirmed testimony and written evidence. The tenant acknowledged receipt of the landlord’s materials. No issues of service were raised. I find the landlord served the tenant in accordance with the *Act*.

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;

- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The parties agreed they entered into a 1-year fixed tenancy agreement for \$1,300.00 monthly payable on the first of the month beginning September 1, 2018 and ending August 31, 2019. At the beginning of the tenancy, the tenant provided a security deposit of \$650.00. A copy of the agreement was submitted.

At the time of signing the agreement, the parties also signed an addendum which allowed the tenant to vacate early. A copy of the addendum was submitted which stated in part as follows:

2. There will be a penalty of one-month rent if the tenant wants early termination of the lease prior to the end of the lease.

The parties agreed the tenant provided one month notice to vacate the unit early and accordingly vacated on April 31, 2019. The landlord testified that she agreed to accept the one month notice to vacate early but intended to demand the rent and utilities due under the agreement to the end of the term. The landlord testified she informed the tenant she accepted their notice on this condition.

At the hearing, the parties agreed the tenant owed the landlord \$126.00 for outstanding utilities due under the agreement to the time of vacating the unit at the end of April 2019.

When the tenants vacated they provided payment of the one month's rent due under section 2 of the Addendum. The landlord acknowledged receipt. Vacant possession was provided to the landlord on April 31, 2019.

The landlord claimed compensation for unpaid rent and utilities from June 1, 2019 to August 31, 2019. The landlord testified to efforts to rent the unit and inability to find a tenant. The landlord submitted calculations and invoices for utility expenses.

The parties agreed that the neither of the tenants JB or GG had agreed with the landlord to any other terms for compensation than those listed in the agreement and addendum. In other words, the tenants JB and GG had not agreed to compensate the landlord for any losses if the landlord were unable to rent the unit after April 31, 2019.

Issue:

Is the landlord entitled to compensation of rent and utilities until the end of the fixed term pursuant to the provisions of section 67?

Is the landlord entitled to reimbursement of the filing fee?

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement.

Section 7(1) of the Act provided that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

In a claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

The claimant must prove the existence of the damage or loss. Secondly, the claiming party must establish that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.

Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

The agreement and addendum between the parties stated that the tenant could vacate early upon the provision of one month's notice and the payment of one month's rent as compensation. The parties agreed the tenant provided one month's notice to vacate April 31, 2019 and paid one month's rent as compensation. The parties agreed that the tenants did not consent to pay the landlord compensation in the event the landlord was

not successful in renting the unit after April 31, 2019 until the end of the fixed term.

As the tenant had complied with the terms of the agreement and addendum, I find the landlord has failed to establish that the landlord has incurred a loss that stems directly from a violation of the agreement or a contravention of the agreement by the tenant.

I therefore find the landlord has failed to meet the burden of proof on a balance of probabilities that the landlord is entitled to compensation for loss of rent and utilities after April 31, 2019 until the end of the fixed term. I therefore dismiss the landlord's claim without leave to reapply.

As the landlord has been primarily unsuccessful in the landlord's claim, I do not award the landlord reimbursement of the filing fee.

As agreed by the tenant, I issue a monetary award to the landlord in the amount of \$129.00 for outstanding utilities to April 31, 2019.

Conclusion

The landlord is entitled to a monetary order in the amount of **\$129.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court to be enforced as an Order of that Court.

The remainder of the landlord's claims are 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: October 10, 2019

Residential Tenancy Branch