



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

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

- a monetary order for unpaid rent and for other money owed pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants 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 landlords' dispute resolution hearing package sent by the landlords by registered mail on July 11, 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 a monetary award for the tenants' failure to pay their security deposit for this tenancy or for other money owed by the tenants? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

On May 30, 2019, the tenant and the landlords signed a one-year fixed term Residential Tenancy Agreement (the Agreement) for a tenancy that was to run from June 15, 2019 until June 14, 2020. Although the Agreement listed both the tenant and their spouse

(MT) as tenants, MM never signed the Agreement as they were living in another province that time. Monthly rent was set at \$2,400.00, payable in advance on the 15th of each month. Although the Agreement called for the provision of a \$1,200.00 security deposit, no security deposit was paid for this tenancy.

The tenant advised the landlords on June 6, 2019 that they were no longer interested in following through with this tenancy and would not be moving into these premises.

The landlords said that shortly after being notified by the tenant that they were not going to move into the rental unit, they advertised the availability of these premises on a local rental website that they had used in the past. They said that they placed this advertisement on the website between June 6 and June 13, 2019. Landlord LB said that new tenants were located as a result of their advertisement. The landlords signed a new tenancy agreement with the new tenants on June 19, 2019. Landlord KB said that the new tenants took possession as of July 1, 2019, and are paying \$2,450.00 per month for their one-year fixed term tenancy with the landlords.

The landlords applied for a monetary award of \$2,400.00, plus the recovery of their \$100.00 filing fee from the tenants. The landlords' application included a request for the recovery of unpaid rent of \$1,200.00 for the period from June 15, 2019 until the new tenants commenced paying rent on July 1, 2019. The remainder of the landlords' claim was for the tenants' failure to abide by Clause 28 of the Addendum to the Agreement, which called for the tenants to forfeit any security deposit they had provided in the event that the tenants ended their tenancy prior to the scheduled end date for their tenancy. At the hearing, Landlord KB recognized that this portion of their claim relied on Clause 28 being interpreted as a liquidated damages clause, although Clause 28 only states that the Landlord will retain the entire amount of the security deposit provided by the tenants. As no security deposit was paid by the tenants, Landlord KB acknowledged that this clause did not entitle the landlords to a monetary award for this amount.

At the hearing and in their written evidence, the tenant questioned the extent to which the landlords took the necessary measures to mitigate the tenants' exposure to the landlords' loss of rent for the last half of June. The tenant said that there is a housing shortage in this municipality and that the landlords could have re-rented these premises more quickly had they taken proper measures to do so.

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. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss. In this case, the onus is on the landlords to prove on the balance of probabilities that the tenant was responsible for the landlords' losses arising out a contravention of the Agreement the tenant signed.

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. 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."

I should first note that a tenancy agreement commences on the date that the parties sign the agreement, whether or not the tenant takes actual possession of the rental unit. In this case, by signing the Agreement, the tenant accepted the rights and responsibilities for this fixed term tenancy as of May 30, 2019.

There is undisputed evidence that the tenant did not pay any rent or security deposit to the landlords for this tenancy. As such, the tenant became responsible for the first month's rent on June 15, 2019. While \$2,400.00 became owing as of that date, section 7(2) of the *Act* places a responsibility on landlords 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 evidence that the landlords did advertise the availability of the rental unit soon after the tenant advised them that they were not going to move into this rental space. Given that notice was only provided on June 6, 2019, it is unlikely that the landlords could have obtained anyone suitable to move into these rental premises as of June 15, 2019, when the tenant's first payment became due. The landlords' prompt action enabled them to find someone by June 19, 2019, who was able to enter a new tenancy as of July 1, 2019, and thus mitigate the tenant's responsibility for the period from July 1, 2019 until June 14, 2020. Based on the evidence presented, I accept that the landlords did attempt to the extent that was reasonable to re-rent the premises and I

am satisfied that the landlords have discharged their duty under section 7(2) of the *Act* to minimize the tenant's exposure to the landlords' loss of income.

In considering the actual amount of the landlords' entitlement to a loss of rent, I allow the landlords' 16/30 of the monthly rent that would have become due on June 15, 2019 for the remainder of June 2019. This results in a monetary award of \$1,280.00 in the landlords' favour for that month (i.e., $\$2,400.00 \times 16/30 = \$1,280.00$). This amount is reduced by the amount of \$50.00 in monthly income that the landlords will be receiving over the duration of the tenancy that the tenant committed to by signing the Agreement on May 30, 2019. The landlords are only allowed to obtain an amount commensurate with their actual loss in rental income from this rental unit during the period of the tenant's fixed term tenancy. Since the new tenants are paying \$2,450.00 in monthly rent instead of the \$2,400.00 that the tenant would have paid over this period of time, the landlord's monetary award is reduced by \$50.00 per month for the period from July 1, 2019 until June 15, 2020, the scheduled end date for the tenant's Agreement with the landlord. This results in a reduction in the landlords' monetary award of \$600.00 for the remainder of the fixed term the tenant agreed to undertake with the landlords (i.e., $\$50.00 \times 12 \text{ months} = \600.00). The landlords' monetary award for loss of rent is \$680.00 (i.e. $\$1,280.00 - \$600.00 = \$680.00$).

I dismiss the landlords' application for the recovery of the unpaid security deposit as I find that neither Clause 28 of the Addendum to the Agreement, nor any other provision in the Agreement or the *Act* enable the landlord to obtain a monetary award in this regard. The Clause in question is not a legal liquidated damages clause and only applies to a security deposit provided by the tenant. As no security deposit was provided, the landlords are not entitled to any monetary award pursuant to Clause 28 of the Addendum.

Since the landlords were partially successful in their application, I allow their application to recover their \$100.00 filing fee from the tenant.

Conclusion

I issue a monetary Order under the following terms, which allows the landlords to obtain a monetary award for their proven loss of rent during the course of this tenancy agreement, plus the recovery of their filing fee:

Item	Amount
Loss of Rent ($\$1,280.00 - \$600.00 =$	\$680.00

\$680.00)	
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$780.00

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 11, 2019

Residential Tenancy Branch