



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Landlord J.C.H.V. (the "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present during the hearing, service of the landlords' notice of application for dispute resolution was confirmed, in accordance with section 89 of the *Act*.

Issues to be Decided

1. Are the landlords entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 15, 2018 and ended on November 24, 2018. This was originally a fixed term tenancy set to end on August 31, 2019. Monthly rent in the amount of \$3,600.00 was payable on the first day of each month. Both parties agree that the tenant ended the fixed term tenancy early. The landlord testified that new tenants moved into the subject rental property on December 21, 2018 at a rental rate of \$3,000.00. The new tenancy agreement was a fixed term tenancy agreement set to end on June 31, 2019. The tenancy agreement between the landlords and the tenant and the landlords and the new tenant were entered into evidence.

Both parties agree that in a Decision dated May 31, 2019, the landlords were awarded damages for loss of rental income for the months of December 2018 to June of 2019. In the May 31, 2019 Decision the landlords' claim for loss of rental income for the months of July and August 2019 were dismissed with leave to reapply as the losses were not known at the time of the May 30, 2019 hearing. The May 31, 2019 Decision was entered into evidence.

The landlord testified that the tenants who moved in on December 21, 2018 continue to reside at the subject rental property at the rental rate of \$3,000.00 per month.

In the current application, the landlord is claiming loss of rental income from July 2019 to December of 2020, for a total of \$13,068.00. The landlord testified that the subject rental property is currently being rented out below market value as a result of the tenant's early termination of the fixed term tenancy agreement. The landlord testified that since the current tenants were not required by law to move out of the subject rental property at the end of their fixed term, the landlords are stuck with tenants paying less than the property should be rented out for and are seeking compensation for that loss.

The tenant testified that the landlords should not be able to seek compensation for loss of rental income past the end of the fixed term in her tenancy agreement.

Analysis

Under section 7 of the *Act* a landlord or tenant who does not comply with the *Act*, the

regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 3 states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. **As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.** [emphasis added]

In this case, the tenant ended a one-year fixed term tenancy early; thereby decreasing the rental income that the landlord was to receive under the tenancy agreement for the months of December 2018 to August 2019. In my May 31, 2019 Decision I Ordered the tenant to compensate the landlord for loss of rental income suffered between December of 2018 and June of 2019. I granted the landlords leave to reapply for damages for July and August 2019 as they were not known at the time of the hearing.

I accept the landlord's testimony that the tenants who moved in on December 21, 2018 did not move out at the end of their fixed term tenancy agreement and paid rent in the amount of \$3,000.00 per month for the months of July and August 2019. I find that the landlords suffered a loss of rental income at a rate of \$600.00 per month for July and August 2019. Pursuant to section 7, the tenant is required to compensate the landlords for that loss of rental income in the amount of \$1,200.00.

Pursuant to Policy Guideline #3 I find that the tenant's duty under section 7 of the *Act* to put the landlord in the same position as if the tenant had not breached the agreement ends when the tenant could have legally ended the tenancy.

Section 45(2) of the *Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Pursuant to section 45(2) of the *Act*, the earliest date the tenant could have legally ended the tenancy was August 31, 2019, the end of the fixed term tenancy agreement. Therefore, pursuant to Policy Guideline #3 the tenant is not liable for any losses suffered by the landlord after August 31, 2019. I therefore dismiss the landlord's claim for loss of rental income from September 2019 to December 2020.

As the landlords were successful in their application, I find that the landlords are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlords in the amount of \$1,300.00.

The landlords are provided with this Order 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: October 29, 2019

Residential Tenancy Branch