



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SELECT REAL ESTATE PROPERTY MANAGEMENT
DIVISION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNRL-S**

Introduction

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

- Authorization to recover the filing fees from the tenant pursuant to section 72; and
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67.

The landlord attended the hearing, represented by property manager, JR ("landlord"). The tenant attended the hearing with his representative, LG ("tenant"). The tenant acknowledges being served with the landlord's Application for Dispute Resolution Proceedings Package and evidence and the landlord acknowledged being served with the tenant's evidence.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed testimony, make submissions, and to question the other party on the relevant evidence provided in this hearing. While I have turned my mind to all the documentary evidence and testimony, not all details of the parties' respective submissions and/or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Issue(s) to be Decided

Is the landlord entitled to additional rent beyond the end of the tenancy?

Can the landlord recover the filing fee?

Background and Evidence

A copy of the tenancy agreement, signed on January 17, 2019 was provided as evidence. The fixed one-year tenancy began on February 1, 2019 set to expire on January 31, 2020. Rent was set at \$1,950.00 per month payable on the first day of the month. A security deposit of \$975.00 was collected from the tenant which the landlord continues to hold.

The tenancy agreement included three terms regarding an end to the tenancy before the end of the fixed term:

3. If for any reason whatsoever, the tenant causes the tenancy to end before the end of the fixed term, the tenant agrees to pay to the landlord as liquidated damages the equivalent of 1 month's rent to the landlord.
4. [term 4 refers to a month to month tenancy - inapplicable]
5. Liquidated damages are an agreed pre-estimate of the landlord's costs of re-renting the premises and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or damages to the premises.

On February 19, 2019, the tenant provided the landlord with notice that he was ending the tenancy by email. The landlord responded to the email asking the tenant for a formal intent to terminate the tenancy for his records. A copy of the email exchange was provided as evidence. On April 8th, the tenant provided the landlord with a Notice To End Tenancy and this Notice included his forwarding address. The parties conducted a condition inspection report on April 23rd and the landlord does not allege any damage done to the rental unit during the tenancy.

The parties agree that the tenant paid rent for the month of February and that in addition, he paid rent for the months of March and April in accordance with the liquidated damage clause in the tenancy agreement.

The landlord testified that the unit remained vacant until he was able to find another tenant to rent the unit as of June 15, 2019. The landlord seeks compensation for additional rent for the months of May and half of June in the amount of \$2,925.00. The landlord testified he advertised, looking for new tenants but the rental market where the unit is located is 'bloated' and he was unable to fill the vacancy until June 15th.

The tenant provided the following testimony. The tenant moved out of the rental unit on March 16th and submits that he fulfilled his obligation to pay the landlord with one month's rent (April rent) in accordance with terms 3 and 5 of the tenancy agreement.

The tenant testified that he tried repeatedly to get the landlord to conduct a condition inspection report with him after he moved out, but the landlord was not willing to do so until April 23rd, at least a month after the tenant had vacated. The tenant points to the original email dated February 19th as evidence of his asking the landlord to conduct a condition inspection report.

There is an 'extreme' housing shortage in the municipality where the rental unit is located. The tenant submits that it is unlikely the unit would remain vacant throughout April, May and June in such a tight rental market.

Analysis

Pursuant to section 44(1)(a)(i), a tenancy ends if a tenant gives notice to end the tenancy in accordance with section 45.

Section 45(2) states:

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.

Section 45(4) states:

A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52(a) to (c) states:

In order to be effective, a notice to end a tenancy must be in writing and must

- a) be signed and dated by the landlord or tenant giving the notice,
- b) give the address of the rental unit,
- c) state the effective date of the notice.

The email dated February 19th shows the tenant was going to end the tenancy. This response from the landlord indicates he wants a 'formal' Notice, which I interpret to mean a Notice that complies with section 52 of the Act. Neither the tenant's email message nor the letter dated April 8th contain all of the information required by section 52. Most importantly, the effective date (move-out date) cannot be determined from reading either of the documents.

Despite this, the evidence clearly shows the landlord was aware that the tenant intended on ending the fixed term tenancy before it's one year expiration. Although the effective (move-out) date is not specified, it's clear that the tenant was going to leave.

As section 45 does not allow a tenant to end the fixed term tenancy on a date earlier than one month after the landlord receives the Notice, I find the earliest effective date for the Notice given in mid-February would be March 31st. March 31st is the day before April 1st, the day in the month that rent is payable under the tenancy agreement and I find March 31st to be the effective date for the tenant's Notice.

Given the finding that the effective date is March 31st, the tenant is obligated pursuant to sections 3 and 5 of the tenancy agreement addendum to pay the equivalent of one month's rent to the landlord as liquidated damages. The parties agree that the tenant paid the entire month's rent for April and the liquidated damages portion of the tenancy agreement has been fulfilled.

Pursuant to section 67 of the *Act*, the landlord seeks additional rent for the periods of May and half of June until the unit was re-rented. 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. Pursuant to section 7(2) of the *Act*, 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.**

This is explored in depth in Residential Tenancy Branch Policy Guideline PG-5.

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.

In the case before me, the landlord testified the rental unit remained unoccupied between the effective date of the Notice, March 31st and June 15th, when he was finally able to secure a renter in the 'bloated' rental market, as he defines it. Although he did not make any specific reference to what steps were taken to re-rent the unit or refer me to any specific documents submitted as evidence, the landlord testified he tried to re-rent it at market rates.

I find that the landlord has not taken any steps to mitigate the damages in this case. There was no evidence provided that the landlord ever tried to re-rent the unit at a **reasonably economic rent**, as was his statutory duty. If the rental market could not sustain the rent advertised while trying to re-rent, the landlord is obligated to reduce the rent to attract a new renter as soon as possible, retaining the right to recover the difference between the new rent and the old one once a new tenant was found.

The lost opportunity to derive income from the vacant unit should not be borne by the tenant. Although the tenant had provided the landlord with rent for the month of April while the unit remained vacant, the landlord had the opportunity to find new tenants as early as April 1st. The landlord has not succeeded in proving he undertook the steps necessary to mitigate the damages he seeks, as required by section 7(2) of the *Act*. As such, I find the landlord is not entitled to the compensation for unpaid rent for May and half of June. The landlord's claim is dismissed.

As the landlord's application was not successful, the landlord is not entitled to recovery of the \$100.00 fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of \$975.00. The full security deposit is to be returned to the tenant.

Conclusion

I order that the tenant is entitled to a monetary order in the \$975.00.

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: November 06, 2019