



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNDC, MNSD, MNR, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income and the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants represented themselves. The landlord was represented by their agent.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income and for the filing fee?

Background and Evidence

The background facts are generally undisputed. The tenancy started on October 01, 2018 for a fixed term of one year. The end date of the fixed term was September 30, 2019. The monthly rent was \$3,850.00 per month and was due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$1,925.00.

A copy of the tenancy agreement was filed into evidence. The agreement contains a vacate clause which states that at the end of the tenancy, the tenant must move out. The reason for the vacate clause is written as "*Landlord use of property*". The landlord

testified that the owner of the rental unit did not occupy the rental unit after the tenancy ended and has re-rented the unit effective November 01, 2019.

The tenant stated that right from the start of the tenancy and through the tenancy, the tenant requested the landlord to fix the fence. The tenant stated that she was concerned about coyotes entering the yard which posed a safety threat to her toddler. The tenant testified that despite multiple requests the landlord did not repair the fence and therefore she was forced to look elsewhere for a safe place to rent.

The landlord stated that the landlord's claim was not related to the fence issue and refused to comment on it.

On May 31, 2019, the tenant gave written notice to end the tenancy effective August 01, 2019. The landlord stated that she advertised the availability of the rental unit on June 06, 2019 and had showings. The landlord was unable to provide information on the number of showings that were conducted. The landlord stated that a new tenant was found for November 01, 2019. The landlord provided a copy of one advertisement that appeared to be posted on the website of the property management company that looks after the rental property.

The tenant moved out on August 01, 2019. A move out inspection was conducted on that day. On August 16, 2019, the landlord made this application to retain the security deposit in partial satisfaction of her monetary claim for loss of income.

Analysis

Section 45 of the *Residential Tenancy 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 is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the sworn testimony of both parties, I find that, on May 31, 2019, the tenant gave two full months' notice to end the tenancy effective August 01, 2019, which is prior to the end date of the fixed term (September 30, 2019). By ending the tenancy prior to the end date of the fixed term, the tenant breached the tenancy agreement. The landlord is claiming a loss of income that resulted from this breach.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act* or their tenancy agreement must do whatever is reasonable to minimize the loss.

In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit.

Based on the testimony and documentary evidence of the landlord, I find that the landlord placed an advertisement on what appears to be the property management website on June 06, 2019, one week after receiving notice from the tenant. The landlord did not file copies of any other advertisements e.g. on popular rental websites, the local newspaper etc. The landlord stated that the unit remained vacant for the months of August, September and October 2019.

The tenant testified that the rental market had limited vacancies and that she found a new place with difficulty. Based on this testimony, I find that the landlord did not make sufficient efforts to advertise which may be the reason for the three-month vacancy in a rental market with a low vacancy rate.

Even though I find that the tenant breached the tenancy agreement which resulted in a loss of income for the landlord, I further find that by placing a single advertisement on June 06, 2019, on the website of the property management company, the landlord did not make reasonable efforts to mitigate her losses. The landlord had the option of advertising on line on multiple popular rental sites that are available and/or advertising in the local newspaper. The landlord could also have mitigated her losses by lowering the rent and recovering her loss from the tenant.

Ordinarily a tenant is responsible for the loss of income suffered by the landlord due to the tenant's non-compliance with the tenancy agreement. In this case, despite the tenant having given 2 full months' notice to end the tenancy, the rental unit was vacant for three months after the tenant moved out. This means that it took the landlord a total of five months to find a tenant. In a rental market that has limited vacancies, I find that other factors may have contributed to the prolonged vacancy. Accordingly I find that the tenant is not responsible for the loss of income suffered by the landlord.

Based on Section 7 of the *Residential Tenancy Act*, I find that the landlord did not do whatever is reasonable to minimize the loss. Therefore I dismiss the landlord's claim to recover the loss of income she incurred.

Since the landlord has not proven her case, she is not entitled to the recovery of the filing fee.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of the monetary claim. Because the landlord's claim has been dismissed it is appropriate that I order the return of the tenant's security deposit. The landlord is currently holding a deposit in the amount of \$1,925.00. I grant the tenant a monetary order in the amount of \$1,925.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The landlord application is dismissed in its entirety.

I grant the tenant a monetary order in the amount of **\$1,925.00**.

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: December 17, 2019

Residential Tenancy Branch