



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on August 02, 2019 (the “Application”). The Landlords sought to recover unpaid rent, to keep the security deposit and reimbursement for the filing fee.

The Landlord appeared at the hearing with D.Y. who spoke on the Landlord’s behalf throughout the hearing. The Tenants appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The Landlords originally sought \$2,250.00 in unpaid rent. The Landlords had sent the Tenants an amendment seeking:

- \$1,125.00 for half a month rental loss;
- \$350.00 for the difference in rent over seven months; and
- \$100.00 for the filing fee.

The amendment was not before me. However, the Tenants acknowledged receiving the amendment and agreed to me proceeding on it.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Landlords entitled to recover unpaid rent?
2. Are the Landlords entitled to keep the security deposit?
3. Are the Landlords entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started March 15, 2019 and was for a fixed term ending March 15, 2020. Rent was \$2,250.00 per month. The parties agreed rent was due on the first of each month. The Tenants paid a \$1,125.00 security deposit.

The parties agreed on the following. The tenancy ended July 31, 2019. The Tenants provided their forwarding address on the move-out Condition Inspection Report on August 01, 2019. The Landlords did not have an outstanding monetary order against the Tenants at the end of the tenancy. The Tenants did not agree in writing at the end of the tenancy that the Landlords could keep some or all of the security deposit.

The parties agreed both participated in move-in and move-out inspections.

D.Y. provided the following submissions.

The tenancy agreement was supposed to end in 2020. The Landlords understood as of an email received June 09, 2019 that the Tenants wanted to end the tenancy early. The Tenants provided written notice June 28, 2019 ending the tenancy early. The Tenants did vacate early. The Tenants did not pay August rent. The Landlords found new tenants for August 15, 2019. The Landlords lost half of August rent. The rent for the new tenants is \$2,200.00 rather than the \$2,250.00 the Tenants were paying. The Landlords therefore lost \$50.00 for the remaining seven months.

The Landlords mitigated their loss. Landlord R.Y. sent the Tenants an email June 09, 2019 after Tenant D.C. mentioning the Tenants wanted to cancel the lease. There were further email communications between the parties. On June 12, 2019, the rental unit was posted for rent on a rental website. The Landlords also reached out to their network and had the rental unit posted on an internal RCMP website. The Landlords

were responsive to the Tenants and their suggestions about re-renting the unit which is shown in the Tenants' timeline of events. The Landlords received emails from seven interested parties about the rental unit. The rental unit was shown to four parties before it was re-rented. The Tenants suggested posting the rental unit on further websites which was done around July 09th or 10th.

The rental unit was listed for \$2,200.00 including one parking spot. This is the same price the rental unit was listed for when the Tenants rented it. The Tenants needed two parking spots so the rent was increased to \$2,250.00. The Landlords offered the new tenants both parking spots. The new tenants were initially interested but then changed their mind and only wanted one parking spot. The Landlords have not rented out the second parking spot.

D.Y. advised that the Landlords agree with the timeline of events provided by the Tenants in evidence.

The Landlords submitted the following documentary evidence. An email showing the Tenants had vacated the rental unit July 24, 2019. Email correspondence with the Tenants and potential new tenants about re-renting the unit. Documentation showing the rental unit was posted on the first rental website June 12, 2019. Documentation showing the rental unit was posted on a second rental website July 09, 2019. Documentation showing the rental unit was posted on a third rental website July 10, 2019.

The Tenants agreed with the following. They gave notice ending the tenancy June 09, 2019 by email. Written notice was given June 28, 2019. They failed to comply with the *Residential Tenancy Act* (the "Act") and tenancy agreement by ending the tenancy early. They vacated the rental unit in July and did not pay August rent.

The Tenants did not dispute that the Landlords did not re-rent the unit until August 15, 2019.

The Tenants further testified as follows.

The Landlords did not try to minimize their loss once the Tenants gave notice ending the tenancy. Initially, it did not seem like the Landlords were working hard to find new tenants. The rental unit was only posted on two platforms. The Landlords have not provided proof that they posted the rental unit for rent on an internal RCMP website.

Further, the Tenants do not know how far this would extend as they could not locate the posting.

In relation to the posting on the first rental website, the Landlords initially included the wrong map location and did not include photos. The Tenants sent photos to the Landlords so they could be posted. Seventeen days were spent trying to get the Landlords to update the posting. The Landlords made more effort to re-rent the unit once the Tenants issued the "Request to Cooperate in Finding a Replacement Tenant" dated June 28, 2019.

The Tenants posted the rental unit on a second rental website to try to assist in re-renting it. The Landlords did not have people available on long weekends to show the rental unit. The Tenants made themselves available to assist. The Tenants tried to do everything they could to cooperate with showings.

In relation to the reduced rent amount issue, the Tenants questioned whether the Landlords tried to rent the second parking spot out and noted it is not mentioned in the postings.

In reply, D.Y. submitted as follows. The Landlords did not update the Tenants regularly when there was no interest in the rental unit at that point. The Landlords had already planned to be away for the long weekend and therefore were not available to show the rental unit.

The Tenants submitted a timeline of events which indicates the following. On June 09, 2019, the Tenants indicated by email that they wished to end the tenancy early. The Tenants did not provide a date by which they intended to move out in the June 09, 2019 email. The Tenants sent the Landlords an email June 11, 2019 offering their assistance with advertising or showing the rental unit and suggesting that it be advertised as soon as possible. The Tenants suggested a July 31, 2019 move-out date. The Tenants sent the Landlords an email June 13, 2019 raising issues about photos and the map used on the posting on the first rental website. The Landlords responded June 13, 2019 indicating Landlord D.Y. had to search for and re-send photos which were added that afternoon and stating that the "slight location discrepancy" was corrected. The Tenants sent the Landlords an email June 21, 2019 providing further photos for the posting. The Landlords replied June 22, 2019 indicating the photos had been added. The Tenants sent the Landlords an email July 10, 2019 stating they posted the unit on the third rental website.

Analysis

Under sections 24 and 36 of the *Residential Tenancy Act* (the “*Act*”), landlords and tenants can extinguish their rights in relation to the security deposit if they do not comply with the *Act* and *Residential Tenancy Regulation* (the “*Regulations*”). Further, section 38 of the *Act* sets out specific requirements for dealing with a security deposit at the end of a tenancy.

Based on the testimony of both parties, I accept that the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security deposit under sections 24 or 36 of the *Act*.

It is not necessary to determine whether the Landlords extinguished their rights in relation to the security deposit under sections 24 or 36 of the *Act* as extinguishment only relates to claims for damage to the rental unit.

Based on the testimony of both parties, I accept that the tenancy ended July 31, 2019. Based on the testimony of both parties, I accept that the Tenants provided their forwarding address on the move-out Condition Inspection Report on August 01, 2019.

Pursuant to section 38(1) of the *Act*, the Landlords had 15 days from August 01, 2019 to repay the security deposit or file an application for dispute resolution claiming against the deposit. The Application was filed August 02, 2019, within the time limit. The Landlords complied with section 38(1) of the *Act*.

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

(2) A landlord...who claims compensation for damage or loss that results from the [tenant's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss. (emphasis added)

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Policy Guideline 5 deals with the duty to minimize loss and states in part:

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss... This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided...

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed...

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...(emphasis added)

There is no issue that the Tenants breached section 45(2) of the *Act* and the tenancy agreement by ending the fixed term tenancy early. The Tenants acknowledged they breached the *Act* and tenancy agreement.

There is no issue that the Landlords lost half of August rent because of the breach. The Tenants acknowledged they did not pay August rent. The Tenants did not dispute that the rental unit was not re-rented until August 15, 2019.

The issue is whether the Landlords minimized their loss.

Based on the submissions of D.Y. at the hearing, I find the Landlords understood as of the June 09, 2019 email that the Tenants wanted to end the fixed term tenancy early. Based on the timeline provided by the Tenants, I find the Tenants suggested a July 31, 2019 move-out date for the first time on June 11, 2019. Based on the documentation provided, I accept that the rental unit was posted on the first rental website one day later, on June 12, 2019. I find the Landlords took steps immediately to re-rent the rental unit.

I am not satisfied the Landlords posted the rental unit on the RCMP internal website. The Tenants pointed out that the Landlords did not provide documentary evidence of this. I did not understand the Tenants to agree that this was done. This is the Landlords' application and their onus to prove. In the absence of further evidence showing the rental unit was posted on the RCMP internal website, I am not satisfied it was.

The Tenants raise an issue with the rental unit being posted in one location. I accept that there are circumstances when this will not be sufficient such as when it is not posted online or is posted on an obscure website. However, this is not the case here. The rental unit was posted on a well known rental website. I find it reasonable that the Landlords posted it on this website.

I also acknowledge that posting a rental unit for rent on one website may not be sufficient as time passes and the rental unit is not re-rented. However, the documentation shows that the rental unit was posted on a second website July 09, 2019 and a third website July 10, 2019. I find this timeline reasonable for posting the rental unit on a second and third website. I acknowledge that the Tenants assisted with the third posting; however, I do not find this relevant. The fact is the rental unit was posted

for rent on three different websites as of July 10, 2019, within one month of the Tenants advising of their suggested move-out date and prior to the move-out date.

The Tenants raise issues about the lack of photos and the wrong map being included on the first rental website posting. However, I find from the email correspondence included in the Tenants' timeline of events that photos were added and the map was corrected June 13, 2019. Further, I find additional photos were added by June 22, 2019. I find this timeline reasonable as the posting was updated and accurate within 11 days of the Tenants advising the Landlords of their suggested move-out date.

I do not accept the Tenants' submission that the Landlords did not take appropriate steps to mitigate or were unresponsive. I find the email correspondence submitted shows the Landlords were responsive to the Tenants throughout the process of trying to re-rent the unit. Further, the email correspondence submitted shows the Landlords were responsive to potential new tenants and were willing to make themselves available for showings.

The Tenants raise an issue about the Landlords being away for the long weekend and point to an email as supporting their position that this was an issue. The email is from a potential tenant who indicates they secured a unit closer to transportation and so chose it. I do not find that the email supports the position that the Landlords being away for the long weekend was an issue for the potential new tenant.

Further, the Tenants breached both the *Act* and the tenancy agreement by ending the fixed term tenancy early. The Landlords were required to take reasonable steps to re-rent the unit. The Landlords were not required to do everything possible to re-rent the unit. It is unreasonable to expect that the Landlords would be available at all times to show the rental unit.

Based on the testimony and documentary evidence submitted, I am satisfied the Landlords took reasonable steps to mitigate their loss. I am satisfied the Landlords are entitled to the \$1,125.00 sought for half of August rent.

I am not satisfied the Landlords are entitled to the additional \$50.00 sought for the remaining seven months as I am not satisfied the Landlords did enough to re-rent the second parking spot with the rental unit or separately.

Given the Landlords were partially successful in this application, I award them reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In summary, the Landlords are entitled to \$1,225.00. The Landlords can keep the \$1,125.00 security deposit pursuant to section 72(2) of the *Act*. The Landlords are issued a monetary order for the remaining \$100.00 pursuant to section 67 of the *Act*.

Conclusion

The Landlords are entitled to \$1,225.00. The Landlords can keep the \$1,125.00 security deposit. The Landlords are issued a monetary order for the remaining \$100.00. This Order must be served on the Tenants. If the Tenants fail to comply with this Order, it 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 *Act*.

Dated: December 04, 2019

Residential Tenancy Branch