



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Jennic Management Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on February 6, 2020. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing. The Tenant did not attend the hearing.

The Landlord applied for an order for substituted service in order to serve the hearing documents to the Tenant by email. The Landlord was granted permission to serve the documents, as per the decision issued on October 29, 2019. That decision stated that documents sent to the Tenant's email address would be deemed served 3 days after they were sent. The Landlord sent the Notice of Hearing and evidence for this dispute resolution on October 31, 2019, as per the email provided into evidence. Pursuant to the order for substituted service issued on October 29, 2019, I find the Tenant is deemed served with this package on November 3, 2019.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for rent or for damage or loss under the Act?
- Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary order requested?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord stated that the Tenant signed a fixed term tenancy agreement ending June 30, 2019. The Landlord stated that the Tenants gave written notice mid-March and vacated on April 16, 2019. The Landlord provided a copy of the tenancy agreement which specifies:

- monthly rent is \$3,295.00 and is due on the first of the month.
- the Landlord holds a security deposit of \$1,647.50 and a pet deposit of \$1,647.50.

The Landlord provided a monetary order worksheet which speaks to the lost rent for May and June 2019, totalling \$6,590.00.

The Landlord stated that he received written notice from the Tenant on March 19, 2019, stating that she would be vacating the unit by April 16, 2019. The Landlord stated that the Tenant paid rent for April and moved out on the 16th, as she stated she would. The Landlord stated that on the same day he got written notice from the Tenant, he posted the ad on craigslist for a reduced amount of \$2,980.00. The Landlord stated that he also enlisted a rental service to help with finding new tenants. The Landlord stated that there were 5 showings, and many email enquiries, but since this is a furnished rental, in a higher end market, it was difficult to find new renters in this rental market. The Landlord explained that the inventory had gone up for these types of rentals, which is why he had to reduce the price to find new tenants. The Landlord stated that there were showings on April 3, 10, 29th, May 6 and a couple more in June. Eventually, the Landlord was able to sign on new renters part way through June. The Landlord stated he did not receive

any rent for June, and although the new Tenants moved in late in June, they did not start paying rent until July 1, 2019.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

I note the following portion of the Act:

Tenant's notice

45 (2) *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.

I find the Tenant was not entitled to end the tenancy early, in the manner they did. They were still under a fixed term tenancy agreement until June 30, 2019. I find the Tenant breached section 45(2) of the Act, which caused a loss of rent to the Landlord.

I note the following relevant portions of the *Policy Guideline #5 – Duty to Minimize Loss*:

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.

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 Tenant paid rent for April and moved out part way through that month. The Landlord is seeking to recover lost rent for May and June, the period of time that the unit was vacant and no rent was collected. I accept that the furnished rental market may have softened over the last few months in the material area, and this may have impacted the ability of the Landlord to re-rent the unit. I also note that the Tenant was under a fixed term tenancy agreement until the end of June 2019, and she was not in a position to legally end the tenancy without repercussion. I find the Tenant breached the Act and the tenancy agreement when she gave Notice and left early. As such, I find the Landlord is entitled to compensation.

I note the Landlord must also take reasonable steps to mitigate the lost rent. I find the Landlord did take reasonable steps to re-rent the unit, including enlisting a rental service, reducing the price by \$300.00 per month. I note the Landlord showed the unit around 6 times and fielded many inquiries. I find the Landlord sufficiently mitigated his loss, and I award the Landlord's claim in full.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security and pet deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

Item	Amount
Lost Rent	\$6,590.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$6,690.00
LESS: Security and Pet Deposit	\$3,295.00
Total Amount	\$3,395.00

Conclusion

The Landlord is granted a monetary order in the amount of **\$3,395.00**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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: February 06, 2020

Residential Tenancy Branch