



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for damage or compensation for damage under the Act in the amount of \$1,210.36, retaining the security deposit for this claim; and a monetary order for utilities in the amount of \$89.64, retaining the security deposit to apply to this claim.

The Tenants, L.C. and S.T., and the Landlord, V.B., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?

Background and Evidence

The Parties agreed that they signed a fixed term tenancy agreement on August 19, 2019, that was to begin on September 9, 2019, and run until August 31, 2020. The Parties agreed that the Tenants would pay the Landlords a monthly rent of \$2,600.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$1,300.00, and no pet damage deposit.

The Tenant, L.C., said that she planned to move to British Columbia from Ontario, and as such, signed a tenancy agreement with the Landlords. The Tenants agreed that S.T. co-signed the tenancy agreement to help L.C., but that she never intended to live in the rental unit. L.C. said that she had already paid the pro-rated September 2019 rent of \$2,200.00, but that she wanted her security deposit back. However, the Tenant did not apply for dispute resolution to request the return of her security deposit.

Termination of the Fixed Term Tenancy

The Parties agreed that on September 14, 2019, L.C. called the Landlord, V.B., to advise that she would not be moving to British Columbia, because her mother had become very ill. In the hearing, L.C. said: "We know that we signed the contract and knew that we would be liable until she rented it. She said okay, she would do what she had to do."

The Parties agreed that the Tenant, S.T., returned the key to the rental unit on September 15, 2019. The Tenant, L.C., said: "I decided I would lose the month's rent, but since I never stepped on the property, I believe my deposit should be given back to me."

The Landlord said that on September 16, 2019, they advertised the rental unit for rent at \$2,600.00. In the hearing, she said:

We had a few people that week. As it was the last minute, no one offered us \$2,600.00 or qualified at that cost. We reduced it immediately to \$2,500.00. I was verbally told that there would be no more money coming from Tenants. We just wanted the people we wanted in the house. I think I had six people come through

the house and three applied, one of which was a family of eight. One was going to move in with a friend, but the friend backed out.

The Landlord said that they were ultimately successful in re-renting the rental unit in October 2019 for \$2,400.00 or \$200.00 less than the Tenants were going to pay.

The Tenant, L.C., said in the hearing:

I feel that with doing the whole lease, both had to have our initials and to sign. With the walk-through on September 9, [S.T.] did her initials, and because I was supposed to do initials. Sherry said, 'I am not going to sign for [L.], so we will wait for [L.] to initial the walk-through. Both signatures should be on the condition inspection report.

[V.B.] decided that she wanted to reduce the rent, maybe to be helpful to rent it out right away. If she didn't rent out the unit, we were liable to pay that rent every single month, so that has nothing to do with me or [S.T.] that she wanted to reduce the rent. It's totally fine to reject people, but it was in her discretion to reduce the rent, so I shouldn't be liable for what she is losing on the rent.

Unpaid Utilities

The Landlords also applied for recovery of the hydro and utilities that were billed to the rental unit for September 2019, for which the Tenants were responsible according to the tenancy agreement. Part 3 of the tenancy agreement indicates what is included in the monthly rent for the rental unit. Electricity, heat, water and other utilities were not checked off in Part 3, as being included in the rent.

The Landlords submitted a monetary order worksheet stating that they had to pay \$45.82 in electricity for the rental unit during September 2019, and \$43.82 in utilities to the City in September 2019. However, the Landlords did not direct my attention, and I did not find any documentary evidence from the billing agencies for these claims, substantiating the amounts.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Termination of the Fixed Term Tenancy

Pursuant to section 16 of the Act, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. Therefore, L.C.'s claim that she never stepped foot in the rental unit is irrelevant in this set of circumstances, as I find that she signed the tenancy agreement, along with the other Parties. L.C. was bound by her signature in the tenancy agreement. I find that her lack of participation in the condition inspection is also irrelevant to this matter, as S.T., the other signing authority participated in the condition inspection.

Section 7(1) of the Act states that if a landlord or a tenant does not comply with the Act, regulation or tenancy agreement, the non-compliant party must compensate the other for the damage or loss that results. Section 67 of the Act authorizes me to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 45 of the Act sets out a tenant's obligations regarding giving notice to end a tenancy. Section 45(2) of the Act deals with ending a fixed term tenancy, as follows:

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.

In this case, the undisputed evidence is that the Tenants breached the fixed term tenancy agreement by providing oral notice to end the tenancy on September 14, 2019, effective October 1, 2019. However, under the Act, the Tenants were not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement, which was August 31, 2020. I find the Tenants have breached section 45(2) of the Act, as the earliest date they could have legally ended the tenancy was on August 31, 2020.

I find that the Landlords did what they could to mitigate the loss they incurred by the early end to the fixed term tenancy. However, the Landlords were unable to find a new

tenant for October 2019, due to short notice end of the tenancy. Further, the amount of rent charged to the new tenants for the duration of the tenancy was less than that which the Tenants would have paid for this time period. As such, I find that the Landlords are entitled to recover the difference in rent of \$200.00 per month. Over the remaining eleven months of the fixed term tenancy agreement, the Landlords would lose \$2,200.00; however, as the Landlords only claimed \$1,210.36 for this claim.

RTB Policy Guideline #3 states that 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. Therefore, I find that the landlord is entitled to the income they lost for the fixed term of the tenancy agreement. In this case, I award the Landlords with **\$1,210.36** in lost rental income for which they applied.

Unpaid Utilities

According to Rule 6.6:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. . . .

In this case, the Landlords must prove on a balance of probabilities that they incurred the costs they claim. However, the Landlords did not submit sufficient evidence to establish that they incurred the costs claimed in this category. Therefore, I dismiss this claim without leave to reapply.

Summary

I find the Landlords are successful in their claim for recovery of \$1,210.36 of lost rental income, since the Tenants breached a fixed term tenancy agreement by ending it without sufficient notice. I, therefore, award the Landlords with recovery of **\$1,210.36** from the Tenants.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security deposit of \$1,300.00 in satisfaction of the Landlords'

monetary award. I authorize the Landlord to retain \$1,210.36 of the Tenant's security deposit and return the remaining **\$89.64** to the Tenants, as soon as possible.

Conclusion

The Landlords are successful in their Application for recovery of the lost rental income, based on the Tenants' having ended the fixed term tenancy agreement without sufficient notice. The Landlords were unsuccessful in their claim for electricity and other utilities, as they provided insufficient evidence to support this claim; therefore, this claim is dismissed without leave to reapply.

The Landlords are authorized to retain **\$1,210.36** of the Tenants' \$1,300.00 security deposit, pursuant to section 67 of the Act, for lost rental income. This loss was caused by the Tenants having breached a fixed term tenancy agreement. The Landlords are ordered to return the remaining amount of the security deposit to the Tenants, as soon as possible in the amount of **\$89.64**.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 4, 2020

Residential Tenancy Branch