



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL-S, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:42 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were each served with a copy of her application for dispute resolution via registered mail on October 31, 2019. The landlord entered into evidence Canada Post receipts evidencing the above mailings as well as Canada Post delivery confirmations stating that the tenants received the landlord's application on November 1, 2019. I find that the tenants were served with the landlord's application for dispute resolution in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

The landlord's application for dispute resolution does not state the street name of the subject rental property. Pursuant to section 64 of the *Act*, I amend the landlord's application to state the street name of the subject rental property.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on August 1, 2019 and ended on October 24, 2019. This was originally a fixed term tenancy set to end on July 31, 2020. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month. A security deposit of \$600.00 and a pet damage deposit of \$600.00 were paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on October 24, 2019 the tenants sent her the following text message:

Hi [landlord], my mailing address is [mailing address], [tenant J.H.] is pregnant and we both are sick from carbon monoxide poisoning. Your suite is inhabitable because it has no ventilation the fan on the microwave is not proper there should be ducting so it can ventilate the carbon monoxide outside. I have moved out and cleaned the suite when would u like to meet up for the key.

The above text message was entered into evidence.

The landlord testified that the tenants did not contact her before the October 24, 2019 text message regarding carbon monoxide. The landlord testified that Fortis BC attended at the subject rental property on October 25, 2019 and were unable to find any evidence of a carbon monoxide leak or any ventilation problem. The landlord testified that a gas inspector also attended at the subject rental property and could not find any issues.

The landlord testified that she started advertising the subject rental property for rent on October 24, 2019 on two different websites. The landlord testified that she renewed one of the online advertisements on November 19, 2019. The landlord entered into evidence one of the online advertisements and proof of its posting date and date of renewal.

The landlord testified that she was able to re-rent the subject rental property at a rental rate of \$1,100.00 per month effective December 15, 2019. The landlord entered into evidence a copy of the new tenancy agreement stating same. The landlord testified that the new tenants paid \$550.00 for December 2019's rent and \$1,100.00 for every month thereafter.

The landlord testified that she is seeking the following damages:

Item	Amount
Loss of rental income for November 2019	\$1,200.00
Loss of rental income for December 2019	\$650.00
Loss of rental income from January to July 2020 at \$100.00 per month	\$700.00
Total	\$2,550.00

The landlord filed her application for dispute resolution on October 28, 2019.

Analysis

Section 45 of the *Act* states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In this case, I find that the tenants did not put the landlord on notice that there was a carbon monoxide leak before they moved out and have presented no evidence that such a leak existed. I find that the tenants have not proved that the landlord breached a material term of the tenancy agreement and were therefore not entitled to break the tenancy agreement by moving out before the end of the fixed term.

Under section 7 of the *Act* a landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 5 states that 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 duty is commonly known in the law as the duty to mitigate. 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. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

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.

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

Policy Guideline 3 states that the 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.

In this case, the tenants ended a one-year fixed term tenancy early; thereby decreasing the rental income that the landlord was to receive under the tenancy agreement for the months November 2019 to July 2020. Pursuant to section 7, the tenants are required to compensate the landlord for that loss of rental income. However, the landlord also had a duty to minimize that loss of rental income by re-renting the unit as soon as possible. I find that the landlord mitigated her losses by advertising the subject rental property for rent the same day she learned that the tenants moved out. I find that the landlord is entitled to recover her loss of rental income as follows:

Item	Amount
Loss of rental income for November 2019	\$1,200.00
Loss of rental income for December 2019	\$650.00
Loss of rental income from January to July 2020 at \$100.00 per month	\$700.00
Total	\$2,550.00

Security Deposit and Filing Fee

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38(a) and 38(b) of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants entire security deposit and pet damage deposit totaling \$1,200.00 in part satisfaction of her monetary claim.

As the landlord was successful in her application for dispute resolution, I find that she is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Loss of rental income for November 2019	\$1,200.00
Loss of rental income for December 2019	\$650.00
Loss of rental income from January to July 2020 at \$100.00 per month	\$700.00
Filing fee	\$100.00
Less security and pet damage deposits	-\$1,200.00
Total	\$1,450.00

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order 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 *Residential Tenancy Act*.

Dated: March 05, 2020

Residential Tenancy Branch