



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Iota
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCL-S, FFL**

Introduction

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

- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant attended the hearing and the landlord attended the hearing represented by property manager, GS ("landlord"). As both parties were in attendance, service of documents was confirmed. The tenant acknowledged being served with the landlord's Notice of Dispute Resolution Proceedings and evidence; the landlord acknowledged service of the tenant's evidence. Neither party indicated any issues with timely service of documents and both were prepared to deal with the merits of the landlord's application.

Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issued a decision to resolve this dispute.

Issue(s) to be Decided

Is the landlord entitled to recover rent for the month of December 2020, after the tenant broke the fixed term tenancy?

Is the landlord entitled to recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The fixed term tenancy began on July 15, 2019 and was scheduled to end on July 30, 2020. Rent was set at \$2,000.00 per month, plus 60% of the utilities. A condition inspection report was conducted at the commencement of the tenancy and at the conclusion of the tenancy. The landlord does not allege any damage done to the rental unit during the tenancy. At the commencement of the tenancy, the landlord collected a security deposit of \$1,000.00 which she continues to hold.

The landlord testified the rental unit is the upper portion of a detached home with two rental units. The tenant sent the landlord a text on October 15th, advising he would be moving out. It was followed up with a formal notice to end tenancy on October 29th when the landlord attended the rental unit to show the home to prospective tenants. The effective date of the notice was November 30, 2019.

The landlord testified she tried to secure new tenants after becoming aware the tenants were moving out, however the time of year the tenants chose to leave was bad, in the winter. The landlord placed an ad in Facebook which the landlord says get distributed to between 14 and 17 different sub-listing groups. Her assistant also placed an ad in Facebook using different photographs and accessing different contacts through Facebook. As well, the landlord paid an additional fee to Facebook to have her ad 'pushed' to different sites. Each additional site costs \$.05 and she is charged \$8.00 for the 'push'. She doesn't actually know where the additional listings go. The landlord testified that she advertises exclusively on Facebook, choosing not to use other online listings such as Kijiji, Castanet or Craigslist for fear of receiving spam emails. The landlord did not specify if she advertised in any print listings. Copies of the Facebook ads were provided as evidence as was a chronology of the showings lined up for the rental.

The landlord testified that there were several responses to her Facebook ad and the one placed by the tenant's wife, however there were issues with each of the applicants.

The landlord testified the owners were very 'picky' about the potential tenants and were unwilling to accept pets, decreased rent, or smokers. Many of the potential renters didn't like the location of the property, not being close to the downtown core. Eventually, the owners of the property who were having a new house built, decided to move into the rental unit while the new house was being built. They took possession of the rental unit on January 1, 2020, so the landlord is seeking compensation for the month the rental unit remained vacant, December 2019. The landlord also seeks utilities for the month of December in the amount of \$225.00.

The tenant provided the following testimony. The reason they left the rental is because a smoker from across the street began to use the spot outside their property to smoke her cigarettes. The landlord acknowledges seeing the article in the local newspaper about the smoker. The tenant also wanted a larger space for his children to play in the backyard.

The tenant submits that the landlord did not do proper marketing of the rental unit since receiving the tenant's one month notice to end tenancy. The tenant submits that the landlord's Facebook ad only appeared in 'closed' sites and could not be viewed in 'open' sites. The tenant was unable to describe the meaning of open and closed Facebook sites. During the time the rental unit remained vacant, the landlord's agent went on vacation and didn't market the unit. The tenant's wife had asked the landlord to provide her with the Facebook listing so that she could assist in marketing it, however the landlord didn't do so. During the hearing, the landlord stated that she doesn't remember if she was able to send the link to the landlord's wife as she's not very 'techy'. The tenant's wife created her own listing and had great response however the landlord never told her whether they were interviewed.

Analysis

Section 1 of the *Residential Tenancy Act* defines a fixed term tenancy as a tenancy under a tenancy agreement that specifies the date on which the tenancy ends. In other words, a fixed term tenancy has a definite commencement date and expiry date.

Neither party may end a fixed term tenancy early, except under specific circumstances: for cause, by agreement of both parties, or an Early Termination for Family Violence or Long-Term Care.

Pursuant to section 44(1)(a)(i), a tenancy can end if a tenant gives notice to end the tenancy *in accordance* with section 45.

Section 45(2) states:

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.

The tenant gave notice on October 29th, ending the tenancy on November 30th. I find that the notice was given contrary to section 45(2)(b) since it had an effective date earlier than the date specified in the tenancy agreement as the end of the tenancy, June 30, 2020.

Residential Tenancy Policy Guideline PG-5 [Duty to Minimize Loss] provides guidance to landlords and tenants regarding ending fixed term tenancies.

Loss of Rental Income

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

In this instance, I find the landlord has provided sufficient evidence to satisfy me she tried to re-rent the unit at a reasonable rent, \$2,000.00, the same rent as the tenants were paying. I base this decision on the copies of the Facebook ads provided as evidence by the landlord. While it could be argued that the landlord could have widened her listing to include ads on sites and publications other than Facebook, I am satisfied that the ad garnered sufficient response to indicate the ad was effective. The fact that the owner of the property was selective in choosing the next set of tenants, including their choice to not have pets is within the owner's prerogative.

Pursuant to section 44, I find the tenant ended the tenancy on the effective date stated on the notice to end tenancy, November 30, 2020. This date is contrary to section 45(2)(b) as November 30th is not the date specified in the tenancy agreement as the end of the tenancy. As the tenant has breached section 45 of the *Act*, the landlord is entitled to be compensated for the month that the rental unit remained vacant, or \$2,000.00. I find the landlord immediately took the steps necessary to mitigate the loss

by trying to locate a new tenant for the month of December but was unsuccessful. Pursuant to section 67 of the *Act*, the landlord is awarded \$2,000.00.

The landlord seeks an additional \$225.00 for unpaid utilities for the month of December pursuant to the tenancy agreement. As the tenancy ended pursuant to section 44 of the *Act* on November 30th, the tenant is no longer responsible for paying the utilities for the rental unit. This portion of the landlord's claim is dismissed.

As the landlord's claim was successful, the landlord is entitled to recover the filing fee of \$100.00.

The landlord continues to hold the tenant's security deposit in the amount of \$1,000.00. Pursuant to section 72 of the *Act*, the landlord is entitled to retain the full security deposit in partial satisfaction of the monetary order.

Item	Amount
1 month vacancy compensation	\$2,000.00
Filing fee	\$100.00
Less security deposit	(\$1,000.00)
Total	\$1,100.00

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,100.00.

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: June 16, 2020

Residential Tenancy Branch