



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover a loss of income, to be compensated for time spent responding to a prior application for dispute resolution by the tenant, for the loss of quiet enjoyment and for the recovery of the filing fee.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to a monetary order to recover loss of income, to be compensated for time spent responding to a prior application for dispute resolution by the tenant, for the loss of quiet enjoyment and for the recovery of the filing fee?

Background and Evidence

The background facts are generally undisputed. The parties agreed that the tenancy started on July 15, 2019 and ended on June 01, 2020 pursuant to an agreement reached during a hearing that took place on May 21, 2020. The monthly rent was \$1,700.00.00 due on the first of each month.

The rental unit consists of a cottage located on the landlord's property about 100 feet away from the main house. The landlord resides in the main house. The landlord testified that the cottage has a small yard, but it is attached to the main yard and is used by the landlord as a pathway to the remainder of the property.

The parties agreed that the relationship between the two went bad in April 2020, when the tenant made a complaint against the landlord for not abiding by the social distancing directive that was in effect during the pandemic. The relationship continued to deteriorate with both parties accusing each other of behaviour that made them uncomfortable in the presence of the other.

On April 22, 2020, the tenant made an application for dispute resolution for multiple remedies. During a hearing on May 21, 2020, the parties came to an agreement. One of the terms of the agreement was that the tenant would move out by June 01, 2020. The landlord stated that he and his spouse spent a lot of time preparing their response to the tenant's application and based on their hourly wages of employment, are claiming to be compensated in the amount of \$1,400.00.

On May 01, 2020, the landlord found out from the tenant that he would be moving out on June 01, 2020. The landlord stated that because he did not feel comfortable showing the rental unit while the tenant was still living there, he did not advertise the availability or show the unit until June 01, 2020. The landlord stated that he was unable to find a tenant for June 2020 and is claiming a loss of income in the amount of \$1,700.00.

The landlord testified that the tenant video taped his children while they were playing in the yard and sent nasty emails to the landlord. Combined with the tenant's complaint to the local by-law officer regarding social distancing, the landlord stated that he experienced a loss of quiet enjoyment and is claiming \$1,000.00 as compensation. The tenant denied most of the allegations.

The landlord is claiming the following:

1.	Time spent responding to tenant's application	\$1,400.00
2.	Loss of income	\$1,700.00
3.	Loss of quiet enjoyment	\$1,000.00
4.	Filing fee	\$100.00
	Total	\$4,200.00

Analysis

1. Time spent responding to tenant's application - \$1,400.00

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore, the landlord's claim for time spent to prepare and respond to the tenant's application for dispute resolution is dismissed.

2. Loss of income - \$1,700.00

Based on the sworn testimony of both parties, I find that, on May 21, 2020, the parties agreed to end the tenancy effective June 01, 2020. The landlord agreed that he was informed by the tenant on May 01, 2020 that he intended to move out by June 01, 2020.

The landlord testified that he did not feel comfortable advertising or showing the unit while the tenant was still in possession of the unit, and therefore he did not make efforts to find a tenant for June 2020 prior to June 01, 2020.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act* or their tenancy agreement must do whatever is reasonable to minimize the loss.

In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit.

Based on the testimony of the landlord, I find that the landlord starting advertising on June 01, 2020, which is one month after receiving notice from the tenant. The landlord stated that as of the date of this hearing June 09, 2020, the unit remains vacant.

Based on this testimony, I find that the landlord did not make sufficient efforts to advertise which may be the reason for the vacancy. Based on Section 7 of the *Residential Tenancy Act*, I find that the landlord did not do whatever is reasonable to minimize the loss. It is also possible that the landlord may find a tenant for the remainder of June 2020, thereby reducing his loss of income.

Based on the above, I dismiss the landlord's claim to recover the loss of income he has incurred for June 2020.

3. Loss of quiet enjoyment - \$1,000.00

With regard to the landlord's monetary claim for compensation for the loss of quiet enjoyment, I have reviewed the submissions of both parties and I find that the final months of the tenancy were very stressful on both parties for different reasons. It is my determination that the parties found themselves in a situation which had progressively evolved and for which each had made some contribution to its unfolding. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the landlord did not provide compelling evidence to support his claim of compensation for loss of quiet enjoyment.

In addition, Section 28 of the *Residential Tenancy Act* guarantees a tenant's right to quiet enjoyment and is the only basis for a party's entitlement to quiet enjoyment under the *Act*. and therefore, the landlord's' claim for compensation is dismissed.

Since the landlord has not proven his claim, he is not entitled to the recovery of the filing fee.

Conclusion

The landlord's application is dismissed.

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 09, 2020

Residential Tenancy Branch