



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

On January 31, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

E.W. attended the hearing as an agent for the Landlord; however, the Tenants did not make an appearance during the 28-minute hearing. All in attendance provided a solemn affirmation.

E.W. advised that a Notice of Hearing and evidence package was served to each Tenant by registered mail on January 31, 2020 (the registered mail tracking numbers are noted on the first page of this Decision). The tracking history indicated that Tenant M.L. signed for one package on February 6, 2020; however, the other package went unclaimed. E.W. also advised that she served additional evidence to the Tenants, by email, on May 29, 2020 and June 2, 2020. Based on this solemnly affirmed, undisputed testimony, I am satisfied that the Tenants have been served the Notice of Hearing and evidence packages.

In reviewing the Landlord’s Application, she requested monetary compensation in the details of her dispute for lost rent due to the fixed term tenancy ending early. However, the Application was only a request for \$1,500.00 and the Application was not amended to reflect a request for additional compensation noted in their evidence. The Tenants were not present to confirm that they understood that the Landlord’s claims would exceed the amount reflected on the Application. As such, the Landlord’s Application will only address monetary claims for compensation in the amount of \$1,500.00.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

E.W. advised that the tenancy started on June 1, 2019 as a fixed term tenancy for one year. However, the tenancy ended when the Tenants gave up vacant possession of the rental unit on January 21, 2020. Rent was established at \$1,800.00 per month and was due on the first day of each month. A security deposit of \$900.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence.

She stated that a move-in inspection report was conducted on May 31, 2019, that a move-out inspection report was conducted on January 21, 2020, and that the Tenants provided their forwarding address in writing on the move-out condition inspection report on January 21, 2020. However, neither copy of these reports were submitted as documentary evidence.

She advised that the Landlord is seeking compensation in the amount of **\$1,500.00** for February 2020 rent because the Tenants signed a fixed term tenancy ending on May 31, 2020, but they gave insufficient notice to end their tenancy early and gave up vacant possession of the rental unit on January 21, 2020. She submitted that the Tenants texted the Landlord on or around January 14, 2020, stating that they would be leaving the rental unit, but they did not know when. She then stated that they later texted advising that they would be ending their tenancy and a move-out inspection was coordinated for January 21, 2020.

When the Landlord received the keys back, she immediately placed an online ad in an to attempt to re-rent the property. Approximately four groups of prospective tenants

were toured through the rental unit; however, due to having such short notice, she was unable to find a replacement tenant until March 1, 2020. No documentary evidence was submitted to support her testimony, with the exception of the tenancy agreement of the new tenants.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Pursuant to Sections 24 and 36 of the *Act*, as the Landlord conducted move-in and move-out inspection reports with the Tenants, I am satisfied that the Landlord has complied with the *Act* and she did not extinguish her right to claim against the security deposit for any damages incurred.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposit in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposit. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposit, and the Landlord must pay double the deposit to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Landlord had the Tenants' forwarding address in writing on January 21, 2020. As the tenancy ended on this date as well, I find that January 21, 2020 is the date which initiated the 15-day time limit for the Landlord to deal with the deposit. The undisputed evidence before me is that the Landlord made this Application to claim against the deposit on January 31, 2020. As the Landlord complied with the requirements of the *Act* by applying within the legislated timeframes, I am satisfied that the doubling provisions do not apply to the security deposit.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or

loss”, and that “the value of the damage or loss is established by the evidence provided.”

Furthermore, Policy Guideline # 5 outlines a Landlord’s duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. In claims for loss of rental income in circumstances where the Tenants end the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

When reviewing the totality of the evidence before me, there is no dispute that the parties entered into a fixed term tenancy agreement for a year starting on June 1, 2019, yet the tenancy effectively ended when Tenants gave up vacant possession of the rental unit on January 21, 2020. Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenants must give written notice to end a tenancy. As well, this notice cannot be effective earlier than the date specified in the tenancy agreement as the end of the tenancy. Section 52 of the *Act* sets out the form and content of a notice to end a tenancy.

Based on the Tenants’ text, I do not find that the Tenants ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenants vacated the rental unit contrary to Sections 45 and 52 of the *Act*. Moreover, I find that the evidence indicates that as a result of the Tenants’ actions, the Landlord could have suffered a rental loss. In addition, I am also not satisfied that the Tenants gave the Landlord sufficient, written notification that they were ending the tenancy and vacating the rental unit. While the evidence does indicate that both parties acknowledged that the tenancy was over, I am satisfied that the Landlord was given little notice to start advertising to re-rent the unit.

As the Landlord had been given minimal notification that the Tenants would be giving up vacant possession, and as this was done at the end of the month, I am satisfied that the Landlord was put in a position that it would have been difficult for her to re-rent the unit. I am satisfied by the evidence presented that she made sufficient attempts to re-rent the unit as quickly as possible after January 21, 2020.

As the Landlord re-rented the rental unit on March 1, 2020, I am satisfied that the Tenants are responsible for the rental loss that the Landlord suffered until she was able to secure a new tenant. However, as the Landlord only sought compensation on her Application for the loss of February 2020 rent in the amount of \$1,500.00, I grant the Landlord a Monetary Order in the amount of **\$1,500.00** only. The Landlord is at liberty to

reapply for monetary compensation for the remaining arrears for February 2020 rent and any other claims with respect to this tenancy.

As the Landlord was successful in her claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of the amount awarded.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

| | |
|-----------------------------|-----------------|
| February 2020 rental loss | \$1,500.00 |
| Recovery of filing fee | \$100.00 |
| Security deposit | -\$900.00 |
| TOTAL MONETARY AWARD | \$700.00 |

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$700.00** 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: June 24, 2020

Residential Tenancy Branch