



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY
MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, MNDCL, 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; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agent 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's agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution via registered mail on March 11, 2020 and was delivered to the tenant on March 17, 2020. The Canada Post tracking statement stating same was entered into evidence. I find that the tenant was served with the landlord's application for dispute resolution in accordance with section 89 of the *Act*.

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 recover the filing fee from the tenant, 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's agent, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's agent's claims and my findings are set out below.

The landlord's agent provided the following undisputed testimony. This tenancy began on November 5, 2019 and ended on December 31, 2019. This was originally a fixed term tenancy set to end on November 30, 2020. Monthly rent in the amount of \$2,300.00 was payable on the first day of each month. A security deposit of \$1,150.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord's agent testified that the tenant provided notice to end tenancy via email on December 19, 2019 effective December 31, 2019. The December 19, 2019 email was entered into evidence.

The landlord's agent testified that it was difficult to get in contact with the owner of the subject rental property during the Christmas holidays to get permissions to re-market the subject rental property for rent. The landlord's agent testified that the subject rental property was re-marketed for rent on January 3, 2020 after the landlord's permission was obtained. Advertisements dated January 3, 2020 onward were entered into evidence. The rental rate sought in the advertisements was \$2,300.00 per month.

The landlord's agent testified that a new tenant moved into the subject rental property on February 28, 2020. The landlord's agent testified that the tenant paid January 2020's rent but did not pay February 2020's rent. The landlord's agent testified that the landlord is seeking pro-rated rent in the amount of \$2,141.35 for rent from February 1-27, 2020.

The landlord's agent testified that the landlord is also seeking an NSF charge of \$25.00 incurred by the landlord for February 2019's rent. A tenant ledger indicating same was entered into evidence.

Analysis

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.

I find that the landlord acted reasonably in advertising the subject rental property on January 3, 2020 given that the tenant's notice to end tenancy was provided to the landlord just before the statutory holidays on December 25, 2019, December 26, 2019 and January 1, 2020.

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 tenant ended a fixed term tenancy early; thereby decreasing the rental income that the landlord was to receive under the tenancy agreement. Pursuant to

section 7, the tenant is required to compensate the landlord for that loss of rental income.

I accept the landlord's agent's testimony that the subject rental property was not rented out until February 28, 2020. I find that the landlord's loss of rental income resulted from the tenant's breach of the tenancy agreement and the tenant is therefore responsible for that loss. I find that the landlord is entitled to recover pro-rated rent from February 1-27, 2020, in the amount of \$2,141.35.

Section 7(1)(d) of the *Residential Tenancy Regulation* (the "*Regulation*") states that a landlord may charge subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Section 4.1 of the tenancy agreement states in part:

The Tenant shall also pay the Landlord an additional Twenty-five Dollars (\$25.00) NSF Fee for each payment which is returned to the Landlord due to there being insufficient funds in the account of the Tenant to cover such payment.

Based on the testimony of the landlord's agent and the ledger entered into evidence, I find that the landlord incurred a \$25.00 NSF charge and that pursuant to section 7(1)(d) of the *Regulation*, is entitled to recover that amount from the tenant.

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

Conclusion

I issue a Monetary Order to the landlord in the amount of \$2,266.35.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: July 07, 2020

Residential Tenancy Branch