



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNRL-S**

Introduction

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

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

The landlord's agent, XM ("landlord") attended the hearing with an advocate, LM. The tenants did not attend the hearing, although I left the teleconference hearing connection open until 2:10 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. 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 gave the following testimony regarding service of the Notice of Dispute Resolution Proceedings. The tenants are common law partners and they purchased a new home. The address of the new home was not given to the landlord, however the landlord testified she went to the tenants' newly purchased home on February 19, 2020 with her son and on that day, her son was assaulted by one of the tenants. The new home is located on the same block as the rental unit, subject of this proceeding. The landlord sent the Notice of Dispute Resolution Proceedings package and the amendment to the Application for Dispute Resolution by registered mail to the residence where the tenants now reside on March 14, 2020. Each tenant was given their own package and tracking numbers for the packages are listed on the cover page of this decision. The landlord testified that only one of the tenants, JS accepted the registered mailing on March 17, 2020 which I confirmed on the Canada Post website during the hearing. The other mailing was returned to the landlord.

Preliminary Issue - Service

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- a. by leaving a copy with the person;*
- b. if the person is a landlord, by leaving a copy with an agent of the landlord;*
- c. by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- d. if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- e. as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

Residential Tenancy Branch Policy Guideline PG-12 [service provisions] states: All parties named on an application for dispute resolution must receive notice of the proceedings. Where more than one party is named on an application, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the hearing being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

While I am satisfied the co-tenant, JS was served with the Notice of Dispute Resolution Proceedings by registered mail on March 17, 2020 in accordance with sections 89 and 90 of the *Act*, I am not satisfied co-tenant VP was sufficiently served. Given that the landlord was not given the tenant's forwarding address, I cannot conclude the tenant VP lives at the address where the mailing was sent to. I am therefore not satisfied VP received notice of the proceedings. I dismiss the landlord's application against the co-tenant VP with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for the tenants breaking a fixed term lease?
Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed evidence. The fixed one-year tenancy began on April 15, 2018, set to end on April 15, 2019. Rent was set at \$3,300.00 per month, paid on the 15th day of each month. A security deposit of \$1,650.00 was collected and a condition inspection report was done at the commencement of the tenancy. A copy of the tenancy agreement was provided as evidence by the landlord.

On October 23, 2018, the tenants emailed the landlord advising her that they purchased a home and take possession of it in mid-December. Emails were sent back and forth between the parties regarding fees sought by the landlord for the tenants ending the tenancy early, copies of the emails were provided as evidence. The tenants paid rent up until the 15th of December, 2018 and the landlord believes they moved out around that time. The tenants never made arrangements to return the keys to her.

The landlord got a new tenant to rent the unit on March 15, 2019. The landlord testified she advertised the rental unit for rent from December 15th to March 15th, however it was Christmastime and finding new tenants was difficult. No documentary evidence of the advertisements was provided for the hearing.

The landlord seeks to recover rent for the time the rental unit was vacant, from December 15 to March 15, a span of three (3) months. The landlord seeks to retain the tenants' security deposit and points to an email from the tenants dated December 7th as evidence of the tenants' willingness to apply the \$1,650.00 security deposit towards rent from December 15th to January 1st.

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 tenants gave a notice to end the tenancy ending the tenancy before April 15, 2019, the date specified in the tenancy agreement as the end of the tenancy. This is contrary to section 45(2)(a) of the Residential Tenancy Act.

Residential Tenancy Branch Policy Guideline PG-5 [Duty to Minimize Loss] states:

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.*

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

PROOF OF EFFORT TO MINIMIZE DAMAGE OR LOSS

The person claiming compensation has the burden of proving they minimized the damage or loss.

If a landlord is claiming compensation for lost rental income, evidence showing the steps taken to rent the rental unit should be submitted or the claim may be reduced or denied.

The landlord testified she sought new tenants for the rental unit for the period between December 15 and March 15, however she provided no evidence to support this testimony. While the landlord is entitled to compensation pursuant to section 67 due to the tenants ending the fixed term tenancy early, I find the landlord's claim should be reduced due to the landlord's lack of proof of taking the steps to re-rent the rental unit.

Turning to the email correspondences I note the landlord offered the tenants a 'move out fee' of \$6,600.00. Given that the landlord seeks compensation of \$9,900.00, for the three(3) months the rental unit was vacant, I am satisfied the compensation awarded to the landlord should be set at \$6,600.00. Pursuant to section 67 of the *Act*, the landlord is awarded \$6,600.00.

The landlord's claim was successful. The \$100.00 filing fee will be recovered from the tenant.

The landlord continues to hold the tenant's security deposit in the amount of \$1,650.00. In accordance with section 72 of the *Act*, the landlord is entitled to retain the entire security deposit in partial satisfaction of the monetary order.

Item	Amount
Compensation for broken fixed term tenancy	\$6,600.00
Filing fee	\$100.00
Less security deposit	(\$1,650.00)
Total	\$5,050.00

Conclusion

The landlord's application against the co-tenant VP is dismissed with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*.

I issue a monetary order in the landlord's favour against the co-tenant, JS in the amount of **\$5,050.00**.

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: July 10, 2020

Residential Tenancy Branch