



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for compensation for loss under the Act, the regulation or tenancy agreement, pursuant to section 67 of the Act;
- an authorization to retain the tenants' security and pet damage deposits under Section 38 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and the tenants attended the hearing. Both parties had a full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

Preliminary Issue – Service of the Documents

The tenant confirmed receipt of the notice of hearing on March 23, 2020 by registered mail. I find the tenants were duly served the notice of hearing in accordance with section 89(c) of the Act.

The landlord affirmed the evidence to support the application was given to the tenant by email on June 21, 2020. The email was submitted into evidence. The landlord affirmed the email address was routinely used to communicate with the tenants about tenancy matters. The tenant denied receiving the evidence and affirmed the email address the landlord used was used only once to communicate with the landlord about tenancy matters on January 29, 2020.

The Residential Tenancy Branch Director's order dated March 30, 2020 provides that:

Pursuant to sections 71(2)(b) and (c) of the Residential Tenancy Act and sections 64(2)(b) and (c) of the Manufactured Home Park Tenancy Act, I order that, until the declaration of the state of emergency made under the Emergency Program Act on March 18, 2020 is cancelled or expires without being extended:

- a document of the type described in section 88 or 89 of the Residential Tenancy Act or section 81 or 82 of the Manufactured Home Park Tenancy Act has been sufficiently given or served for the purposes of the applicable Act if the document is given or served on the person in one of the following ways:
 - the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed

Rule of Procedure 3.5 states:

3.5 Proof of service required at the dispute resolution hearing

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.

As the landlord did not submit any copies of email correspondence with the tenant other than the one with the evidence, I can not confirm the evidence was sent to the email address that the tenant has routinely used to correspond about tenancy matters with the landlord.

Thus, I do not find the landlord gave the tenant evidence to support their application in compliance with section 89(1) of the Act and do not admit the landlord's evidence.

The tenant affirmed her evidence was served in person to the landlord on Friday, July 17, 2020, three days prior to the hearing. The landlord affirmed she did not receive the tenants' evidence. The tenant was unable to provide proof she served the evidence in person to the landlord. Thus, I do not find the tenant gave her responsive evidence to the landlord in compliance with section 88 of the Act and I do not admit the tenant's evidence.

Issues to be Decided

Is the landlord entitled to:

1. retain the deposits and receive a monetary award for compensation for losses caused by the tenants?

2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed the fixed-term tenancy started on June 01, 2019, ended on March 01, 2020 and was supposed to end on May 31, 2020. Monthly rent of \$1,800.00 was due on the first day of the month. At the outset of the tenancy a security deposit of \$900.00 and a pet damage deposit of \$900.00 (the deposits) were collected. The landlord still holds the deposits. This application was filed on March 12, 2020.

The landlord affirmed the tenants served a notice to end tenancy in the end of January, 2020.

The landlord posted a website advertisement on January 30, 2020 and around mid-February the same advertisement was posted on another website. On March 24, 2020 the landlord renewed the same advertising, which was continuously posted on one of the websites. The landlord was only able to re-rent the rental unit on April 15, 2020 for \$1,800.00 per month.

The landlord is claiming for loss of rental income from March 01 to April 15, 2020 in the total amount of \$2,700.00.

The tenant affirmed she signed the tenancy agreement and knew it was a fixed term tenancy, but did not receive a copy of the tenancy agreement until March 01, 2020, during the move-out inspection. The tenant affirmed the landlord was aware on January 15, 2020 that the tenants were going to end the tenancy and the tenants offered help to advertise the rental unit but the landlord did not communicate with them.

Analysis

Sections 7 and 67 of the Act state:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Based on the undisputed testimony, I find that the tenants were aware the tenancy was for a fixed term ending on May 31, 2020 and the tenants ended the tenancy early on March 01, 2020 contrary to section 45(2)(b) of the Act:

(2)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 timing of when the tenants received a copy of the tenancy agreement is not relevant because the tenants knew they had agreed to a fixed term ending May 31, 2020.

I find that due to the tenants' failure to pay rent until the end of the fixed term tenancy agreement on May 31, 2020, the landlord incurred a loss of rent income from March 01 to April 15, 2020 in the total amount of \$2,700.00.

Residential Tenancy Branch Policy Guideline 3 sets conditions for loss of rental income claims. It states:

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. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

[...]

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. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Further to that, Policy Guideline 5 states:

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.

(emphasis added)

I find the landlord mitigated her losses by continuously advertising the rental unit since January 30, 2020 asking for the same amount of rent on two websites.

In accordance with section 7 of the Act, I find the tenants are responsible for the loss of income from March 01 to April 15, 2020 in the total amount of \$2,700.00 because the tenants ended a fixed-term tenancy agreement before the agreed end date.

As such, I order the tenants to pay the landlord \$2,700.00 for loss of rental income.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. Thus, I order the landlord to retain the tenants' deposits of \$1,800.00 in partial satisfaction of the monetary award granted.

As the landlord was successful in this application, I find the landlord is entitled to recover the \$100.00 filing fee.

In summary:

Loss of rental income (March 01 to April 15, 2020)	\$2,700.00
Filing fee	\$100.00
Minus deposits	\$1,800.00 (subtract)
Total monetary award	\$1,000.00

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$1,800.00 deposits and grant the landlord a monetary order in the amount of \$1,000.00.

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 21, 2020

Residential Tenancy Branch