



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX PENTITION REALTY and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNRL-S, MNDCL-S

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on May 25, 2018. The Landlord applied for a monetary order for unpaid rent, for a monetary order for damages and losses due to the tenancy, and for permission to retain the security deposit. The matter was set for a conference call.

Both Tenants and the Landlord's Agent (the "Landlord") attended the conference call hearing and were affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Landlord submitted an amendment application to the Residential Tenancy Branch on April 30, 2020; increasing their claim from \$825.00 to \$2,151.39. The Landlord submitted a copy of a Canada Post registered mail, receipt, as proof of service of the amendment application to the Tenants.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to a monetary order for damages or losses due to the tenancy?
- Is the Landlord entitled to retain the security deposit?

Background and Evidence

The parties agreed that this tenancy began on September 1, 2019, as a one-year fixed term tenancy, ending August 31, 2018. Rent in the amount of \$1,650.00 was to be paid by the first day of each month, and the Landlord had been given an \$825.00 security deposit at the outset of the tenancy. The Landlord provided a copy of the tenancy agreement into documentary evidence.

The parties agreed that the Tenants served the Landlord with a notice to end their tenancy, as of March 31, 2020, by a written letter dated February 27, 2020.

The Landlord testified that they were not able to secure a new renter for this rental unit until May 1, 2020. The Landlord is requesting to recover their loss in rental income for April 2020, in the amount of \$1,650.00

The Tenants testified that they gave the Landlord over 30 days' notice to end their tenancy and provided them with a list of 25 names of people they had found online that were interested in renting the property. The Tenants testified that had the Landlord conducted an immediate search, they could have found a new renter to take the property for April 1, 2020.

The Landlord testified that they initially conducted an internal search of their database of people looking for a rental property, to see if they had someone waiting that had been pre-approved. The Landlord then testified that once that search was exhausted, they started advertising the rental property as available, on March 12, 2020. The Landlord could not speak to what happened with the 25 names, of possible renters, the Tenants had provided to the property management company.

The Landlord testified that the owner was charged a 20% Tenant Placement Fee, to secure the new renter for the rental unit, in the amount of \$330.00. The Landlord is requesting to recover that charge and submitted page 11 of a property management services contract into documentary evidence.

The Tenants testified that they knew nothing of this potential charge, as it had not been verbally communicated to them or included in their tenancy agreement.

The Landlord testified that they were seeing to recover \$31.45 in advertising costs, to secure the new renter for the rental unit. The Landlord submitted an account ledger into documentary evidence.

Analysis

Based on the above, testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed the tenancy agreement submitted into documentary evidence by the Landlord, and I find that these parties entered into a one-year fixed term tenancy, starting September 1, 2019, and ending August 31, 2020, in accordance with the *Act*.

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement or, in a month to month tenancy, without giving at least one clear rental period notice.

Tenant's notice

45(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.

I accept the agreed-upon testimony of these parties that the Tenants, gave notice to the Landlord on February 27, 2020, that they would be ending their tenancy early, and that they moved out in accordance with their notice as of March 31, 2020. I find that the Tenants breached section 45 of the *Act* when they ended their tenancy before the date specified in the tenancy agreement.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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. 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.

I accept the testimony of the Landlord that they were not able to secure a new renter of the rental unit until May 1, 2020. I find that the Tenants' breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord for April 2020. I also find that the Landlord has provided sufficient evidence to prove the value of that loss; however, I am not satisfied that the Landlord took reasonable steps to minimize the losses due to the Tenants' breach.

During the hearing, the Landlord testified that they did not start advertising for a new renter until March 12, 2020, 14 days after they had been notified of these Tenants decision to end the tenancy early. I find that it was unreasonable of this Landlord to wait a full 14 days before they started advertising this rental unit's availability and that this delay in advertising would have significantly impact their ability to secure a new renter for this rental unit.

Overall, I find that the Landlord did not act reasonably to minimize their damage or loss due to the Tenants' breach. Consequently, I find that the Landlord is not entitled to the recovery of their lost rental income for April 2020.

The Landlord has also claimed for \$330.00 to recovery a tenant placement fee charged by their property management company. I have reviewed the one-page document, entered into documentary evidence to support this part of the Landlord claim, and I find this document to be insufficient to support this portion of the claim. I noted that this document does include a section that allows for a tenant replacement fee equal to 20% of the gross rent to be charged; however, this document does not include names, an address or signatures. It was also noted that this was page 11 of a larger document, perhaps, had the whole document been provided, it may have shown that this was an agreed-to cost of the owner of this property. Nevertheless, I find it completely insufficient of this Landlord, to provide only one page of this document, as proof they

had contacted to this amount in relation to the property management fees for this rental property.

Additionally, I noted that the Landlord has not provided any evidence to show that they had actually been charged this fee. For these reasons, I dismiss the Landlord's claim for \$330.00 in the recovery of a tenant placement fee for the rental unit.

The Landlord had claimed for \$31.45, to recover their costs to advertise the rental unit, in order to secure a new renter for the property. I have reviewed the one-page document, entered into documentary evidence to support this part of the Landlord's claim, and I find this documents again does not indicate a name of the Landlord, the rental property address or any indication that would show that the charge recorded on this document was inrelation to this tenancy, the Landlord or the rental property. Again, I find that there is insufficient evidence before me to prove, to my satisfaction, that this charge had been in relation to this rental property. In the absence of sufficient evidence to show that this charge was related to this rental property, I find that I must dismiss the Landlord's claim for \$31.45 in the recovery of advertising costs.

With respect to the Landlord's claim for the costs associated with printing evidence and sending register mail to the Tenants for these proceedings, the Landlord was advised in this hearing that with the exception of compensation for the fee for filing the Application for Dispute Resolution the *Act* does not permit a party to claim for compensation for other costs associated with participating in the dispute resolution process. As such, I dismiss the Landlord's claim to recover Canada post fees and printing costs in their entirety.

Additionally, section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

As I have dismissed the Landlord claim, I order that the Landlord return the Tenants' security deposit to the Tenants, within 15 days of the date of this decision.

I grant the Tenants leave to apply for the return of double their security deposit if the Landlord fails to return the deposit as ordered.

Conclusion

I dismiss the Landlord's claim without leave to reapply.

I order the Landlord to return the security deposit to the Tenant, within 15 days of the date of this decision.

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: August 17, 2020

Residential Tenancy Branch