



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NAROD PROPERTIES CORP. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, MNDCL, FFL

Introduction

On April 9, 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*.

J.N. attended the hearing as an agent for the Landlord, with S.F. attending as well. The Tenant also attended the hearing. All in attendance provided a solemn affirmation.

J.N. advised that he served a Notice of Hearing package and some evidence to the Tenant by registered mail on April 15, 2020 and the Tenant confirmed that he received this. Based on this undisputed testimony, I am satisfied that the Tenant has been served the Notice of Hearing package and some evidence. In addition, based on this undisputed testimony, I am satisfied that this evidence has been served, that it will be accepted, and that it will be considered when rendering this Decision.

The Tenant advised that he did not submit any evidence for consideration on this file as he did not understand that he was able to, despite having this information in the Notice of Hearing package provided to him.

J.N. also advised that he served the Amendment and additional evidence to the Tenant by regular mail on August 7, 2020 and the Tenant confirmed that he received this. He stated that the reason this was served so late is because he did not know the final total of lost rent and that he had some health issues that he was dealing with. While the Tenant confirmed that he received this package, he took issue with it because it was served on him so late. However, he did acknowledge that he had reviewed this Amendment and was prepared to respond to it.

When reviewing this late Amendment, I find it important to note that Rule 4.2 of the Rules of Procedure state that “In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.” Furthermore, Rule 4.7 states that “A respondent may raise an objection at the hearing to an Amendment to an Application for Dispute Resolution on the ground that the respondent has not had sufficient time to respond to the amended application or to submit evidence in reply. The arbitrator will consider such objections and determine if the amendment would prejudice the other party or result in a breach of the principles of natural justice. The arbitrator may hear the application as amended, dismiss the application with or without leave to reapply, or adjourn the hearing to allow the respondent an opportunity to respond.”

While this Amendment was late, as both parties were aware that this Application pertained to monetary compensation due to a fixed-term tenancy being broken early, I find that it could be reasonably anticipated that future rental loss may have been a possibility and that the amount of rent owing could have increased since the time of the Application. I have considered the Tenant’s objections; however, as he had reviewed this Amendment and additional evidence, as he was prepared to respond to it, and as he had not submitted any evidence at all despite having an opportunity to do so prior to the hearing, I am satisfied that the amounts for rent owing would have been reasonably anticipated and that there is no prejudice to the Tenant by having this addressed. In addition, as the Tenant was prepared to respond to the late evidence, I have accepted that evidence and will consider it when rendering this Decision.

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.

All parties agreed that the tenancy started originally on September 1, 2017 as a fixed term tenancy for two years, and then an addendum was signed on July 18, 2019 extending the tenancy for another fixed length of one year from September 1, 2019 to August 31, 2020. However, the tenancy ended when the Tenant gave up vacant possession of the rental unit on April 7, 2020. Rent was established at \$4,045.00 per month and was due on the first day of each month. A security deposit of \$1,925.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

All parties agreed that the Tenant provided his forwarding address in writing on the move-out inspection report that was completed on April 7, 2020.

J.N. advised that the Landlord is seeking compensation in the amount of **\$4,045.00** because the Tenant ended the tenancy with verbal notice on March 23, 2020 and gave up vacant possession of the rental unit. He advised that the Tenant came into the Landlord's office, that he explained that the strata council knowingly withheld information regarding a resident in the building recently dying from COVID, and that he would be moving out immediately. J.N. stated that he attempted to explain that he did not receive any information from the strata about this resident contracting COVID, but he was aware that there was a presumptive case of a resident in the building. However, there was no definitive evidence of what had happened. He stated that the Tenant was extremely angry and was asked to leave the office.

He stated that the Tenant put a stop payment on April 2020 rent, and when he was asked for this rent, the Tenant advised that he knew of an acquaintance that might be interested in renting the unit. However, the Tenant never gave J.N. this person's contact information. J.N. advised that once he knew the Tenant was leaving, he posted ads everyday to try and re-rent the unit and that he would routinely delete the ad and then re-post it to ensure that it would always be near the top of the online listing. He noted that he made the mistake of posting the rental unit in April 2020 for \$4,200.00 per month but he believes he lowered that the next day to \$4,045.00. As this is a high-end rental unit, he stated that there are not many interested, prospective applicants.

The Tenant advised that he went to the Landlord's office on March 23, 2020 to talk about the COVID issue as the concierge gave him a heads up that a resident in the building died from COVID. As a result, he stated that the concierge warned him that the fire department advised that residents of the building should not be allowed in or out of the building. He stated that he asked J.N. if the strata had informed him of this COVID incident, and the Tenant stated that he was treated so poorly by J.N. that he decided that he would move out immediately. At that point, he gave notice verbally that he would be ending his tenancy. When he was asked why he did not submit any evidence for consideration to support any of his allegations, he stated "it is what it is."

He confirmed that he did not give any written notice to end the tenancy, nor was he ending the tenancy due to a breach of a material term of the tenancy agreement.

J.N. explained that he did not receive the letter from the strata as it was sent to the residents of the building. He tried to explain to the Tenant what information the strata was attempting to convey in that letter. In addition, he stated that when he advised the Tenant that he may be responsible for future month's rental loss, the Tenant threatened him to the point that the police needed to be called to advise the Tenant to stop.

The Tenant alleged that J.N. was intentionally egging him on so that his reactions could be recorded.

J.N. advised that the Landlord is seeking compensation in the amount of **\$7.50** because the Tenant put a stop payment on April 2020 rent and the bank charged this amount as a service fee. He referenced clause #10 of the tenancy agreement which indicated that this type of fee could be charged back to the Tenant if incurred.

The Tenant did not make any submissions with respect to this issue.

Finally, J.N. advised that the Landlord is seeking compensation in the amount of **\$11,100.00** because of the rental loss that the Landlord suffered as a result of not being able to re-rent the unit. This amount is comprised of \$4,045.00 for May 2020 rent, \$4,045.00 for June 2020 rent, \$2,465.00 for July 2020 rent, and \$545.00 for August 2020 rent. He stated that as the Tenant gave verbal notice, he was not sure if the Tenant was really moving. When it was determined that the Tenant was sincere, a move-out inspection was conducted on April 7, 2020 and he then took photos of the rental unit.

He re-iterated that he would post the rental unit daily, then remove the post, and re-post it the next day to ensure that the ad was always current. He advised that as it was a high-end unit, there was not much interest, but he estimated that he dealt with approximately 12 prospective tenants in three months. He also hosted virtual showings of the rental unit. As there was not much interest, he lowered the rent in June 2020 and then lowered it again in July 2020. He was able to secure a new tenant on July 29, 2020 at \$3,500.00 per month, so the request for July 2020 rent is the pro-rated amount that the Tenant would be responsible for. In addition, the request for August 2020 rent is the difference in the amount of the Tenant's rent less what the new tenant is paying. J.N. submitted documentary evidence of his efforts to re-rent the unit.

The Tenant advised that he had no comments to make on this claim, but he then questioned J.N.'s online ads in April 2020 as he had listed the rental unit for \$4,200.00 per month on April 9, 2020 and it looks like this was only changed to \$4,045.00 per month ten days later.

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.

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 Tenant's 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 Tenant, pursuant to Section 38(6) of the *Act*.

Based on the evidence before me, I am satisfied that the Landlord had the Tenant's forwarding address in writing on April 7, 2020. As such, I find that this was 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 April 9, 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 Tenant ends 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 September 1, 2019, yet the tenancy effectively ended when Tenant gave up vacant possession of the rental unit. Sections 44 and 45 of the *Act* set out how tenancies end and also specifies that the Tenant 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 Tenant's own admission, he did not give any written notice to end the tenancy. As such, I do not find that the Tenant ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenant 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 Tenant's actions, the Landlord could have suffered a rental loss. As the Tenant provided verbal notice and gave up vacant possession of the rental unit shortly thereafter, I am satisfied that the Landlord was given little notice to start advertising to re-rent the unit.

As the Landlord had been provided with minimal notification that the Tenant 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 to re-rent the unit in April 2020. Despite J.N.'s online ad being posted for more than \$4,045.00 per month for several days in April 2020, as the Tenant gave such short notice, I do not find it would have been realistic for J.N. to have found a suitable tenant in such a short amount of time anyways. As a result, I am satisfied by the evidence

presented that he made sufficient attempts to re-rent the unit as quickly as possible after the Tenant gave up vacant possession of the rental unit. Consequently, I grant the Landlord a monetary award in the amount of **\$4,045.00** for April 2020 rent.

With respect to the Landlord's claim for \$7.50 for the stop payment fee, based on the undisputed evidence, I grant the Landlord a monetary award in the amount of **\$7.50** to satisfy this claim.

Regarding the Landlord's claim for rental loss from May to August 2020, as this was a high-end rental unit, I am satisfied that the amount of interested, prospective tenants would be less than average. Furthermore, based on the COVID pandemic, I find it more likely than not that there were even fewer people interested in moving during this time. Based on the evidence and testimony before me, I am satisfied that J.N. adequately mitigated this loss, that he re-rented the rental unit on July 19, 2020 for a reduced rent, and that the Tenant is responsible for the rental loss that the Landlord suffered until J.N. was able to secure a new tenant. Ultimately, I grant the Landlord a Monetary Order in the amount of **\$11,100.00** to satisfy this debt.

As the Landlord was successful in these 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 Tenant to the Landlord

April 2020 rental loss	\$4,045.00
May 2020 rental loss	\$4,045.00
June 2020 rental loss	\$4,045.00
Partial July 2020 rental loss	\$2,465.00
Partial August 2020 rental loss	\$545.00
Stop payment fee	\$7.50
Recovery of filing fee	\$100.00
Security deposit	-\$1,925.00
TOTAL MONETARY AWARD	\$13,327.50

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$13,327.50** 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: August 19, 2020

Residential Tenancy Branch