



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, 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 of rental income under the Act, the Regulation or tenancy agreement pursuant to section 67 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness KD for the landlord also attended.

The landlord (applicant) affirmed she served the application and the evidence (the materials) by email on June 21, 2020. The tenant (respondent) confirmed receipt of the email containing the materials. Based on the testimony, I find the landlord served the materials in accordance with the Act.

The tenant affirmed he did not serve his evidence. Thus, the tenant's evidence is not accepted.

Issues to be Decided

Is the landlord entitled to:

1. receive a monetary award for loss of rental income?
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 attending 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. I explained rule 7.4 to the attending parties; it is their obligation to present the evidence to substantiate the application.

Both parties agreed the fixed-term tenancy started on September 01, 2019, ended on February 29, 2020 and was supposed to end on August 31, 2020. Monthly rent was \$1,900.00 due on the first day of the month. At the outset of the tenancy a security deposit of \$950.00 was collected. The tenancy agreement was submitted into evidence.

Both parties also agreed the tenant served a notice to end fixed term tenancy on December 30, 2019. A copy of the notice was submitted into evidence. It states: "I am therefore responsible to pay rent up until the last day of August 31, 2020 if you are unable to rent this suite before then."

The landlord started showing the rental unit on December 31, 2019. On January 11, 2020 the landlord hired a property manager to advertise the rental unit. A text message dated January 10, 2020 was submitted into evidence. It states: "I am having problem with my tenant as I briefly told you. What I am thinking is I hire you to advertise and rent out my suite. What I learned is this is something the tenant would have to pay."

The landlord affirmed on January 13, 2020 the rental unit was first advertised and on January 31, 2020 a paid advertising was posted on a second website. A proof of payment of paid advertising on February 01, 2020 was submitted into evidence.

A move-out inspection form signed by both parties on February 25, 2020 was submitted into evidence. The tenant confirmed he signed it with the hand-written notice that states:

Break lease liquidated damages: \$950 + 47.50 GST = 997.50
6 months Rent (mar-sept) unless ReRented 6 x 1900 – 11,400.00
Deducted from S/D 1,2397.50
S/D: 950
Balance owing 11,417.50

The landlord affirmed the liquidated damage for the termination of the fixed term tenancy agreement was the \$950 service fee for the property manager to re-rent the

rental unit, plus \$47.50 GST. The landlord did not return the security deposit because she was authorized to retain it because of the liquidated damages.

The landlord always asked for \$1,900.00 and was able to re-rent the rental unit on April 01, 2020 for this amount.

The tenant affirmed there were issues with the landlord about noise during the tenancy and he did not feel comfortable at the rental unit. There was one showing in January, the tenant was looking every day for rental units and the tenant only saw one advertise posted after February 07, 2020. The tenant affirmed there were very few places available for rent and it should have been very easy to rent his rental unit. The tenant did not create any difficulties when the landlord or her agent booked viewings.

Witness KD affirmed the tenant had issues with the landlord and the landlord looked for a new tenant that respects the noise level that the landlord tolerates.

The landlord affirmed she met 3 prospective tenants in February, but they did not sign a tenancy agreement and did not explain why they did not submit an application.

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 the tenant ended a fixed-term tenancy agreement on February 29, 2020 and the landlord was only able to re-rent the rental unit on April 01, 2020.

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.

For example, a tenant has agreed to rent premises for a fixed term of 12 months at rent of \$1000.00 per month abandons the premises in the middle of the second month, not paying rent for that month. The landlord is able to re-rent the premises from the first of the next month but only at \$50.00 per month less. The landlord would be able to recover the unpaid rent for the month the premises were abandoned and the \$50.00 difference over the remaining 10 months of the original term. In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until

the end of the subsequent month. If a month to month tenancy is ended for cause, even for a fundamental breach, there can be no claim for loss of rent for the subsequent month after the notice is effective, because a notice given by the tenant could have ended the tenancy at the same time.

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)

Based on the landlord's testimony and the proof of payment of a paid advertising on February 01, 2020, I find the landlord tried to re-rent the rental unit in January, February and March 2020.

I find that due to the tenant's failure to pay rent until April 01, 2020 (the date the rental unit was re-rented), the landlord incurred a loss of rental income for the month of March 2020.

Based on the landlord's testimony, I find the landlord acted to minimize her losses. However, the landlord should have taken additional steps to minimize her loss of rental income, such as lowering the amount asked for rent. I find the landlord should have reduced the asking price by 10% during the month of February (one month after she started advertising the rental unit), and by an additional 20% during the month of March 2020, totaling a reduction of 30% from the original asking price.

Thus, I order the tenant to pay the landlord an amount of \$1,330.00 for the loss of rental income for the month of March 2020 (\$1,900.00 - 30%).

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 Rent (March 2020)	\$1,330.00
Filing fee	\$100.00
Total	\$1,430.00

Conclusion

Pursuant to sections 67 and 72 of the Act, I grant the landlord a monetary order in the amount of \$1,430.00.

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: August 04, 2020

Residential Tenancy Branch