



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, 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 unpaid rent, pursuant to section 67 of the *Act*;
- a monetary order for loss under the *Act*, the regulation or tenancy agreement, pursuant to section 67 of the *Act*;
- an authorization to retain the tenant's security deposit under Section 38 of the *Act*; and
- an authorization to recover the filing fee for this application, pursuant to section 72.

I left the teleconference connection open until 1:47 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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.

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on April 17, 2020, in accordance with section 89(1)(d) of the *Act* (the tracking numbers are recorded on the cover of this decision).

Section 90 of the *Act* provides that a document served in accordance with Section 89 of the *Act* is deemed to be received if given or served by mail, on the 5th day after it is

mailed. Given the evidence of registered mail I find the tenant is deemed to have received the materials on April 22, 2020.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Is the landlord entitled to:

1. retain the security deposit and receive a monetary award for unpaid rent and for compensation for losses caused by the tenant?
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 party, 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.

The landlord affirmed the fixed-term tenancy started on September 01, 2019, ended on April 11, 2020 and was supposed to end on August 31, 2020. Monthly rent of \$1,200.00 was due on the first day of the month. At the outset of the tenancy a security deposit of \$600.00 was collected and the landlord still holds in trust. A copy of the tenancy agreement was submitted into evidence.

A copy of the tenant's notice to end tenancy dated April 06, 2020 was submitted into evidence. The landlord replied on the same day and informed the tenant:

As you are aware we do have a lease agreement that continues until the end of August 2020 and you are responsible for the rent to the end of that term. While I had indicated to you that I was open to discussion about ending the lease early we never did discuss this and did not ever come to an agreement on what the terms would be for ending your tenancy.

In the case of a fixed term agreement such as we have, under legislation, I have a 'duty to minimise loss'. This means that I am responsible for making a reasonable effort to re-rent the suite in which case you would not be responsible for the remaining months of the lease. I will certainly do that and will let you know when I have successfully found a new tenant.

However, until I have been able to find a new tenant you are legally responsible to continue paying rent. I had previously offered to be flexible on the date of receiving April's rent but will of course now expect that to be paid in full before your stated

moving date of April 11. May's rent will be due on May 1st as usual, except in the unlikely event that I am able to find a new tenant by then.

The landlord posted a website advertisement on April 06, 2020 and informed her friends that the rental unit was available for rent. The landlord was only able to re-rent the rental unit on May 09, 2020 for \$1,200.00 per month. The landlord received \$200.00 for April's rent and did not receive any payment for May's rent.

The landlord is claiming for the balance of April's rent and loss of rental income from May 01 to 08, 2020 in the total amount of \$1,300.00. A monetary order worksheet (RTB form 37) was submitted into evidence.

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 landlord's undisputed testimony and the tenancy agreement, I find the tenant must pay monthly rent in the amount of \$1,200.00 and in April 2020 the tenant only paid \$200.00. Thus, I find the tenant owes \$1,000.00 for the balance of April's 2020 rent.

Based on the landlord's undisputed testimony and the tenancy agreement, I find the tenant was aware the tenancy was for a fixed term ending on August 31, 2020 and the tenant ended the tenancy early on April 11, 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.

I find that due to the tenant's failure to pay rent until the end of the fixed term tenancy agreement on August 31, 2020, the landlord incurred a loss of rent income from May 01 to 08, 2020 in the total amount of \$320.00 (8 days, each pro rated day at \$40.00).

In accordance with section 7 of the Act, I find the tenant is responsible for the loss of income from May 01 to 08, 2020 in the total amount of \$320.00 because the tenant ended a fixed-term tenancy agreement before the agreed end date.

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 attempted to mitigate her losses by continuously advertising the rental unit since April 06, 2020 asking for the same amount of rent.

As the landlord only applied for a monetary order of \$1,300.00 knowing she was entitled to a higher amount, I order the tenant to pay the landlord \$1,300.00 for the balance of April's rent and loss of rental income from May 01 to 08, 2020.

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 tenant's deposit of \$600.00 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:

Balance of April's 2020 rent	\$1,000.00
Loss of rental income from May 01 to 08, 2020	\$320.00
Total owed:	\$1,320.00
Total applied:	\$1,300.00
Filing fee	\$100.00
Total awarded:	\$1,400.00
Minus security deposit:	\$600.00 (subtract)
Total monetary award:	\$800.00

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the \$600.00 security deposit and grant the landlord a monetary order in the amount of \$800.00.

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 12, 2020

Residential Tenancy Branch