



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Unpaid rent;
- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. No one attended the hearing on behalf of the Tenants. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondents must be served with a copy of the Application and Notice of Hearing. As no one attended the hearing on behalf of the Tenants, I confirmed service of these documents as explained below.

The Landlord testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, as well as the majority of their documentary evidence was sent individually to each of the Tenants by registered mail on April 20, 2020, at the forwarding address provided to them in writing by the Tenants. The Landlord provided me with the registered mail tracking numbers and receipts as well as confirmation from Canada Post that all three registered mail packages were sent as described above and delivered on April 21, 2020. As a result of the above, I find that the Tenants were each served with the above noted documents in accordance with the Act and the Rules of Procedure on April 21, 2020.

The Landlord stated that additional documentary evidence was served on each of the Tenants at the same address on August 11, 2020, by posting it to their door. The Landlord stated that after they posted the documents to the door, they watched one of the Tenants come outside to look at the documents and that when they came back later that day, the documents had been removed. Based on the above, I find that the Tenants were also served with the above noted documents on August 11, 2020.

Based on the above and as the documents were served on the Tenants in accordance with the timelines set out in rule 3.14 of the Rules of Procedure, I therefore accept the Landlord's documentary evidence for consideration in this matter. Pursuant to rule 7.3 of the Rules of Procedure the hearing also proceeded as scheduled, despite the absence of the Tenants. During the hearing the Landlord mentioned on several occasions that the Tenants had acknowledged receipt of the Application, Notice of Hearing, and their documentary evidence but had advised them that they would not be attending the hearing as they did not recognize the authority of the Residential Tenancy Branch (the Branch).

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

Preliminary Matters

Although the Landlord stated that the Tenants advised them that they do not recognize the authority of the Branch, no arguments were presented by the Tenants in the hearing as to why the Act would not apply and no documentary evidence was submitted for my review relating to a lack of jurisdiction on the part of the Branch to hear and decide this matter. Further to this, I note that the parties came before me in April of 2020 in relation to a different matter, and that no concerns regarding the Branch's jurisdiction were raised.

As a result of the above, I am satisfied that this Application relates to a tenancy to which the Act applies and therefore I accept jurisdiction to hear and decide this matter.

Issue(s) to be Decided

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to compensation for monetary loss or other money owed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The 12 month fixed-term tenancy agreement in the documentary evidence before me states that the tenancy began on August 9, 2019, and has an end date of July 30, 2020. It states that rent in the amount of \$1,950.00 is due on the first day of each month, that a security deposit was paid in the amount of \$975.00 and that a pet deposit in the amount of \$100.00 was paid. It also contains a \$1,950.00 liquidated damages clause. In a previous decision dated April 15, 2020, I found that these were the correct terms for the tenancy agreement and that the Tenants had breached the Act by ending their fixed term tenancy early on November 1, 2019, a date earlier than allowable under section 45 (2) of the Act, and that they had done so in a manner other than that permitted by the Act. I also awarded the Landlord recovery of November 2019 rent in the amount of \$1,950.00 and recovery of 50% of the \$100.00 filing fee and authorized the Landlord to retain the Tenants' security and pet damage deposits in partial repayment of the above noted amounts owed.

The Landlord stated that although they immediately advertised the rental unit for rent at the same rate paid by the Tenants, they were unable to secure a new tenant for November 2019. As a result, the Landlord stated that they dropped the price by \$200.00 in December 2019, and two weeks later were successful in securing a new tenant for December 15, 2019. The Landlord stated that the Tenants owe \$975.00 for half of December 2019 rent, the difference between what would have been owed by the Tenants under their tenancy agreement, and the amount paid by the new tenant who took possession December 15, 2019. The Landlord also sought \$1,500.00 in lost rent over the balance remaining on the Tenants fixed-term as the rental unit was ultimately rented at a reduced monthly rate.

The Landlord stated that the Tenants also owe \$327.00 in outstanding utilities for November 2019 and half of December 2019, as they were required to pay \$218.00 for utilities per month, in addition to rent.

The Landlord also sought \$500.00 for liquidated damages. Although the liquidated damages clause in the tenancy agreement states that \$1,950.00 will be charged, the Landlord stated that they only incurred \$500.00 in advertising and other costs associated with getting the rental unit re-rented and as a result, they are only seeking \$500.00 in liquidated damages from the Tenants as a result of breaching the terms of their fixed-term tenancy agreement.

Finally the Landlord sought recovery of the \$100.00 filing fee and \$40.76 in registered mail costs, as they stated that the Tenants have demonstrated a blatant disregard for the Act and the authority of the Residential Tenancy Branch (the Branch), have attempted to avoid service, have threatened to call the police on them if they serve documents personally or by posting it to their door or placing it in the mailbox, and are intentionally making the process difficult. As a result, the Landlord stated that they feel they were left with no other option but to file the Application and to serve the Tenants by registered mail.

In support of their testimony the Landlord submitted documentary evidence including but not limited to a Monetary Order Worksheet; written submissions; registered mail tracking numbers, receipts and delivery confirmations; a copy of a previous decision from the Branch rendered by me in relation to this tenancy on April 15, 2020, and a copy of the associated Monetary Order; an invoice for advertising and other costs; a copy of a new tenancy agreement entered into with the new tenant of the rental unit; and documents relating to the early end of the tenancy by the Tenants.

Although I have previously found in this decision that the Tenants were duly served with a copy of the Application, the Notice of Hearing, and all of the documentary evidence before me from the Landlord, no one appeared at the hearing on behalf of the Tenants to provide any evidence or testimony for my consideration.

Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In the previous decision dated April 15, 2020, I found that the Tenants had breached the Act by ending their fixed term tenancy early on November 1, 2018, a date earlier than allowable under section 45 (2) of the Act, and that they had done so in a manner other than that permitted by the Act. Based on the uncontested and affirmed testimony of the Landlord and the documentary evidence before me for consideration, as well as the previous decision dated April 15, 2020, I am satisfied that the Landlord suffered a monetary loss in the amount of \$3,342.76 as a result of the Tenants' breach of the Act. I am also satisfied that the Landlord acted reasonably to mitigate this loss by claiming only the loss incurred for re-renting the rental unit instead of the full liquidated damages amount, by getting the rental unit re-rented as quickly as possible, and by decreasing the advertised rent when it did not re-rent at the same rental rate paid by the Tenants after one month. Based on the above, I find that the Landlord is therefore entitled to recover \$3,342.76 from the Tenants for liquidated damages, lost rent, unpaid utilities, and the cost of registered mail.

As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72 (1) of the Act. Pursuant to section 67 of the Act, the Landlord is therefore entitled to a Monetary Order in the amount of \$3,442.76.

Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$3,442.76**. The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants 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 26, 2020

Residential Tenancy Branch