



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*"), made on May 2, 2020. The Landlord applied for a monetary order for damages or compensation under the *Act*, permission to retain the security deposit, and to recover the filing fee paid for the application. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each 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.

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 damages or compensation under the *Act*?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

The tenancy agreement shows that the tenancy began on June 1, 2019. Rent in the amount of \$1,680.00 was payable on the first day of each month, and the Tenant paid a security deposit of \$840.00 at the outset of this tenancy. A copy of the tenancy agreement was submitted into documentary evidence by the Landlord.

The Tenant testified that they gave notice to end her tenancy to the Landlord on April 5, 2020, with an effective date of the end of April 2020. The Tenant submitted a copy of their text message notice to end tenancy into documentary evidence.

The Landlord testified that they received the Tenant's text message notice on April 5, 2020. The Landlord testified that since the Tenant did not provide them with a clear rental period notice, the Tenant still owed the next month's rent, for May 2020. The Landlord is requesting the full rent for May 2020, in the amount of \$1,680.00.

When asked by this Arbitrator, the Landlord testified that they had notified their Agent that the Tenant was moving out but that they did not know if the Agent had attempted to secure a new renter for the rental unit, for May 2020. The Landlord argued that since the Tenant did not provide them with the required months notice, the May 2020 should be awarded to them.

Analysis

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

I find that the parties entered into a one-year fixed-term tenancy, beginning on June 1, 2019, in accordance with the *Act*.

I accept the testimony of these parties that the Landlord received notice from the Tenant on April 5, 2020, to end this tenancy as of the end of April 2020.

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.

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.

As per the tenancy agreement, I find that this tenancy could not have ended in accordance with the *Act* until May 31, 2020. I find that the Tenant failed to comply with the *Act* when they issued notice to the Landlord to end the tenancy as of April 30, 2020.

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.

In this case, I find that the Tenant's breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord and that the Landlord has provided sufficient evidence to prove the value of that loss. However, I find that the Landlord did not act reasonably to minimize their damages or losses due to the Tenant's breach, when they did not ensure

that attempts were made to try and re-rent the rental unit for May 2020. Section 7 of the *Act* states the following:

Liability for not complying with this Act or a tenancy agreement

7 (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.

I find that the Landlord was in breach of section 7(2) of the *Act* when they did not take steps to re-rent the rental unit after being notified that the Tenant had decided to end the tenancy early. Therefore, I dismiss the Landlord's claim for the recovery of the loss of rental income for the month of May 2020.

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 their application, I find that the Landlord is not 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 Tenant's security deposit to the Tenant, within 15 days of receiving this decision.

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

Conclusion

The Landlord's application is dismissed without leave to reapply.

I order the Landlord to return the security deposit to the Tenant, within 15 days of receiving 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: September 1, 2020

Residential Tenancy Branch