



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlords attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlords stated that the notice of hearing package was served on each of the tenants via Canada Post Registered Mail on May 6, 2020 and have submitted copies of the Canada Post Receipt and Tracking Labels as confirmation. The landlords also filed an amendment lowering the monetary claim to \$3,775.00, removing the claim for damages and only seeking compensation for loss of rental income. The landlords confirmed that an order for substitute service was granting authorizing the landlords to serve the tenants via email. The landlords have submitted copies of the emails dated August 7, 2020 for each of the tenants which include the attachments which contain copies of the amendment application, evidence and the decision authorizing substitute service.

I accept the undisputed affirmed evidence of the landlords and find that the tenants have been properly served as per sections 88 and 89 of the Act with the original notice of hearing package, amendment to the application for dispute and the submitted documentary evidence. Although the tenants did not attend, I find that the tenants are deemed served as per section 90 of the Act.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on May 1, 2019 on a fixed term tenancy ending on May 31, 2020 and then thereafter on a month-to-month basis or another fixed term as per the submitted copy of the signed tenancy agreement dated April 17, 2019. The monthly rent was \$2,450.00 payable on the 1st day of each month. A security deposit of \$1,225.00 was paid.

The landlords seek a monetary claim of \$3,775.00 which consists of:

\$3,675.00	Unpaid Rent, April 15, 2020 to May 31, 2020
\$100.00	Filing Fee

The landlords claim that the tenants vacated the rental unit on April 15, 2020 before the end of the fixed term tenancy on May 31, 2020. The landlords despite their best efforts were unable to re-rent the unit until June 1, 2020. The landlords stated that upon being notified, the landlords immediately began advertising the unit for rent on April 15, 2020. The landlords stated that they received 120 inquiries, had 20 showings but only 3 person(s) interested to apply for the rental between the dates of April 15, 2020 and June 1, 2020. The landlords stated that they were forced to lower the set rent to \$2,250.00 then again it was lowered to \$2,000.00, including the cost of utilities and allowing pets before being successful in obtaining a new tenant for June 1, 2020. The landlords seek compensation for the loss of rent for the period April 15, 2020 to June 1, 2020 which equals to \$3,675.00 (\$1,225.00 ½ months rent for April and \$2,450.00 for May 2020).

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed affirmed evidence of the landlords and find that the tenants prematurely ended the tenancy on April 15, 2020 without any notice to the landlord.

Residential Tenancy Branch Policy Guideline #5, Duty to Minimize Loss, Loss of Rental Income states in part,

A. LEGISLATIVE FRAMEWORK

Under section 7 of the Residential Tenancy Act (RTA) and Manufactured Home Park Tenancy Act (MHPTA), 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 resulting damage or loss.

A landlord or tenant claiming compensation for damages or loss has a legal obligation to do whatever is reasonable to minimize the damage or loss.

B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- A. remove and dry the possessions as soon as possible;*
- B. promptly report the damage and leak to the landlord and request repairs to avoid further damage;*
- C. file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.*

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

Partial mitigation

Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the landlord failed to make the repairs and the tenant did not apply for dispute resolution

soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

Betterment

The purpose of compensation is to restore the landlord or tenant to a position as if the damage or loss had not occurred. Sometimes repairing damage or replacing damaged items puts the landlord or tenant suffering damage or loss in a better position than they were before the damage or loss occurred...

Loss of Rental Income

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:

- A. re-rent the rental unit at a rent that is reasonable for the unit or site; and*
- B. 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...

In this case, I accept the undisputed affirmed evidence of the landlords and find that reasonable efforts were made to advertise the rental on April 15, 2020 for immediate occupation. The landlords provided undisputed affirmed evidence that there were 120 inquiries, 20 showings and 3 applicants. The landlords also stated that monthly rent was lowered twice to \$2,000.00; utilities were included and having pets were authorized before finding a successful candidate for a tenant.

Based upon the above, I find that the landlords have established a claim for loss of rental income of \$3,675.00, equal to compensation of \$1,225.00 for ½ of April and \$2,450.00 for May of 2020.

The landlords are also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlords are granted a monetary order for \$3,775.00.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the 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: September 03, 2020

Residential Tenancy Branch