Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, 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 sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The landlord's agent (the "agent") and tenant B.P. attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the agent served the tenants with the landlord's application for dispute resolution via email on May 8, 2020 and the landlord's evidence on June 2, 2020. I find that the tenant was served in accordance with the March 30, 2020 Director's Order.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?

4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2019 and the tenants moved out on March 24, 2020. This was a fixed term tenancy agreement that was originally set to end on August 31, 2020. Monthly rent in the amount of $1,950.00 was payable on the first day of each month. A security deposit of $975.00 was paid by the tenants to the landlord. Water and electricity were not included in the rent. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Tenant B.P. testified that he did not give the landlord his forwarding address in writing. Both parties agree that the tenants gave the landlord notice to end tenancy via email on February 25, 2020. The email states:

> Further to my last e-mail and our discussions this morning regarding exorbitant electricity bill that i am receiving which I can't afford to pay any further. We have implemented all the suggestions given by your electrician and we don't see any improvement and still the cost of electricity is almost $ 10 /day Hence I have no other option but to look for some other apartment for rental. Hence you may please look for any other party interested in renting this apartment effective 1st April 2021. Your support in this regard is much appreciated.

Tenant B.P. testified that the email meant to provide an effective date of April 1, 2020, not April 1, 2021. Subsequent email communications show that both parties understood the move out date to be April 1, 2020.

Previous emails entered into evidence show that the tenants complained of high electricity bills and the landlord's agent provided tips on reducing their electricity consumption.

The agent testified that the landlord received the February 25, 2020 email on February 25, 2020 and immediately started marketing the property for rent. The agent testified that tenant B.P.'s family were accommodating for showings of the subject rental property in March 2020. The landlord entered into evidence proof of marketing from April 8, 2020 to May 14, 2020. Tenant B.P. testified that he could not recall if the landlord showed the property in March 2020. I provided the landlord's agent with 24 hours to upload proof of marketing for March 2020.

The agent uploaded a screen shot from an online advertising platform which shows that the subject rental property was marketed for rent six months ago, which is on or around March 8, 2020. The advertisement states that the property is available for April 1, 2020 at a rental rate of $1,950.00.

The agent testified that a new tenant was found for June 1, 2020 at a rental rate of $1,850.00. The new tenancy agreement was entered into evidence and was signed by the parties on May 20, 2020.

Both parties agree that the tenants paid April 2020's rent in the amount of $1,950.00. The agent testified that the landlord is seeking May 2020's rent in the amount of $1,950.00 because the tenant broke the fixed term lease and the landlord was not able to find a new tenant prior to June 1, 2020.

The agent testified that the landlord lost rental income in the amount of $154.48 per month for the months of June, July and August as the new tenancy agreement was for $100.00 per month less and included the cost of water. The agent entered into evidence a water bill for January 1, 2020 to December 31, 2020 in the amount of $653.85 which equates to a monthly fee of $54.48. The total claimed is $463.44.

The agent testified that the landlord is also seeking the re-leasing fee of $971.25 paid to the property management company to find a new tenant. A receipt for same was entered into evidence.

Tenant B.P. testified that he ended the lease early because the electricity bills at the subject rental property were exorbitant. Tenant B.P. testified that he did not wish to move but the electricity bills were not affordable and after implementing the landlord's energy saving suggestions, the electricity bills remained high. The tenant testified that he should not have to pay for May's rent or the decreased income for June to August because of the high electricity bills and the notice to end tenancy he provided the landlord.

The tenant testified that he should not have to pay the releasing fee because the landlord would have had to pay that fee at the end of August had he moved out on that date.

Analysis

Section 45 of the *Act* sets out when and how a tenant may end a tenancy. Section 45(2) states that 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.

Pursuant to section 45(2), the earliest date the tenants were permitted to end their tenancy was August 31, 2020.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Residential Tenancy Policy Guideline 8 states that to end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a

result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I find that none of the tenants' correspondence to the landlord provides the landlord with a reasonable deadline to correct the high electricity bills and did not inform the landlord that the tenants considered the high electricity bills to be a breach of a material term of the tenancy agreement. I also find that none of the correspondence from the tenants to the landlord explicitly states that if the corrections are not made by a fixed deadline, that the tenants will end the tenancy. I find that the tenants have not met the requirements set out in Residential Tenancy Policy Guideline 8 to end the tenancy for breach of a material term. I therefore find that the tenants breached section 45(2) of the *Act* by ending the tenancy prior to August 30, 2020.

Under section 7 of the *Act* a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

I find that the landlord mitigated its losses by marketing the subject rental property for

rent at the same rental rate as that paid by the tenants shortly after receiving the tenants' notice to end tenancy.

Policy Guideline 3 states that 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.

In this case, the tenants ended a one-year fixed term tenancy early; thereby decreasing the rental income that the landlord was to receive under the tenancy agreement for the months of May to August 2020. Pursuant to section 7, the tenants are required to compensate the landlord for that loss of rental income. I find that the landlord is entitled to the following:

Item	**Amount**
May rent	$1,950.00
Decreased rental income from June to August 2020	$463.44
Leasing costs	$971.25
Total	$3,384.69

I note that while the landlord would have had to incur the leasing costs at the end of August 2020 had the tenants vacated at that time, the expense was incurred sooner than it otherwise would have and the frequency the landlord pays said expense was also increased. The tenants breached the *Act* which resulted in the leasing expense, the tenants are therefore responsible for this expense.

Section 38 of the *Act* states that within 15 days after the later of:

> (a)the date the tenancy ends, and
>
> (b)the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The tenant testified that he did not give the landlord his forwarding address; therefore, pursuant to section 38 of the *Act,* the landlord is not yet required to return the tenants' security deposit.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' security deposit in the amount of $975.00.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the $100.00 filing fee from the tenants pursuant to section 72 of the *Act.*

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	**Amount**
May rent	$1,950.00
Decreased rental income from June to August 2020	$463.44
Leasing costs	$971.25
Filing fee	$100.00
Less security deposit	-$975.00
Total	**$2,509.69**

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: September 08, 2020

Residential Tenancy Branch