



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, MNDCL, FFL

Introduction

The landlord filed an application for Dispute Resolution (the “Application”) on May 5, 2020 seeking an order to recover monetary loss for unpaid rent, and compensation for other money owed by the tenant. Additionally, they applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing on September 8, 2020 pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”). In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the hearing; the tenant did not attend. The tenant did not submit or serve documents as evidence for this hearing.

In the hearing, the landlord confirmed they delivered notice of this hearing to the tenant on May 8, 2020. The option at the time of their Application was to serve this information via email. They verified the tenant’s email address was one that they had used for communication with the tenant “for quite some time.” They included all their prepared evidence in their emails to the tenant notifying of this hearing.

In consideration of the evidence presented by the landlord, and with consideration to section 89 of the *Act*, I find the tenant was sufficiently served with notice of this hearing, as well as the landlord’s evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to a monetary order for compensation for other money owed pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to its terms. Both the landlord and tenant signed this agreement on January 26, 2020. The tenancy started on February 1, 2020 for a fixed term ending on January 31, 2021. The monthly rent was \$1,280.00 per month. The tenant paid a security deposit of \$640.00. The agreement contained an addendum, signed January 26, 2020, wherein clause 8 states: "In the event of a breach of the Residential Tenancy Agreement, the tenant agrees to a charge equal to one-month rental payment."

The tenancy ended on May 4, 2020. The tenant via email dated April 2, 2020 stated: "This email is to officially state the end of my tenancy as of May 1st, 2020. I plan to leave the property on April 30th, 2020." In the hearing the landlord stated that the tenant left some personal items behind and then finally retrieved those on May 4, 2020.

The landlord and the tenant met to inspect the condition of the rental unit on April 30, 2020. The tenant and landlord signed a Condition Inspection Report to say they agreed on the state of the rental unit at the end of the tenancy. The tenant signed to show they agree on the \$640.00 deduction from the security deposit and the \$40.00 deduction from a key deposit, for a total deduction of \$680.00. They provided a forwarding address on the document. Both parties signed the report at the time of move out.

The landlord advised the tenant by letter dated April 30, 2020 of the following:

- an early ending to the fixed-term tenancy constitutes "a breach of the Agreement";
- the tenant's one-month notice dated April 2, 2020 effectively makes the end of tenancy date May 31, 2020 – this is at least one month's written notice;
- with a breach of the agreement, the Addendum paragraph 8 provides for one-month rent amount payment as "liquidated damages".

On their Application, the landlord stated: "Negotiation made to ½ month rent for May if paid by May 4, 2020." In the hearing, the landlord stated this e-transfer from the tenant

did not comply by May 4. The landlord completed a 'Monetary Order Worksheet' dated May 5, 2020 in preparation for this hearing. It shows the amount total: \$1,880.00. This reflects the total amount of 2 months rent owing: one-month rent for liquidated damages and the full rent amount for the month of May, then subtracting \$680.00.

The tenant did not attend the hearing and did not provide documentary evidence prior to the hearing date.

Analysis

From the testimony of the landlord I am satisfied that a tenancy agreement was in place. The landlord provided the specific term of the rental amount. The tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

The *Act* section 45 sets out how a tenant may end a tenancy:

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.

In this case, the evidence of the landlord is that the tenant breached the fixed term tenancy agreement by providing notice to end the tenancy on April 2, 2020. Under the *Act*, the tenant was not entitled to give notice to end the tenancy for an effective date that was earlier than one month after the landlord received the notice.

I find a remedy is in order where the tenant breached the *Act*. I award a replacement of the full rent for the next month of May because the tenant gave incorrect notice to end the tenancy. This award for damages is an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. This is the loss of rent up to the earliest time the tenant could legally have ended the tenancy at the end of May 2020, the next full month of rent as claimed by the landlord.

The Residential Policy Guideline 4 on Liquidated Damages is in place to provide a statement of the policy intent of the *Act*. It provides: "The amount [of damages payable] agreed to must be a genuine pre-estimate of the loss at the time the contract is entered

into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.”

Here, the clause in question states: “In the event of a breach of the Residential Tenancy Agreement, the tenant agrees to a charge equal to one-month rental payment.”

I find a framework for this clause is not in place. The catalyst event – a “breach of the Residential Tenancy Agreement” – has very wide interpretation, and it is not clear if it applies only for the ending of the tenancy. As such, it appears arbitrary and is not a genuine pre-estimate of loss. As provided for in section 6(3) of the *Act*: “A term of a tenancy agreement is not enforceable if . . . (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.”

In sum, I find the liquidated damages clause is invalid in that it is punitive in nature. I make no award for the amount it sets out.

The tenant agreed that the landlord shall keep the security deposit at the end of tenancy. I am satisfied this is “to pay a liability or obligation of the tenant” and the landlord is authorized to retain the amount as per section 38(4)(a) of the *Act*.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$1,280.00. After setting off the \$680.00 security deposit and key deposit amounts, already retained by the landlord, there is a balance of \$600.00. I am authorizing the landlord to keep the security deposit amount and award the balance of \$600.00 as compensation to them.

Because they are successful in their application, I grant the \$100.00 cost of the filing fee to the landlord.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$700.00. 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 *Act*.

Dated: September 14, 2020

Residential Tenancy Branch