



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL-S

Introduction

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

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

WH testified on behalf of the tenants in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing. In accordance with section 89 of the *Act*, I find that the tenants duly served with the landlord's application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for money owed or losses?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This fixed-term tenancy was to begin on January 15, 2020 and end on January 14, 2021. Monthly rent was set at \$2,200.00, payable on the first day of the month. The landlord collected a security deposit in the amount of \$1,100.00, which they still hold.

Both parties confirmed that the tenants gave written notice to the landlords on February 29, 2020 that he was ending the fixed-term tenancy. The tenant testified that he had ended the tenancy as he lives on the same floor in a different rental unit, and had rented the rental unit for his elderly mother. The tenant testified that due to health reasons he had to end the tenancy in order for his mother to be moved to a long-term care facility. The tenant testified that on January 2, 2020, when he had attended to view the rental unit, he had communicated to the landlord that the primary purpose of the rental unit was for his elderly mother, and the secondary reason was for him to have a larger office.

The tenant provided in his evidentiary materials a copy of the #RTB-49 Form signed by a physician, SG, dated February 27, 2020. The name of the tenant on the form is the named tenant WH. The tenant testified that he left the RTB-49 form with his key on the counter on March 4, 2020. The tenant testified that his only witness was his partner, the other named tenant on the written tenancy agreement.

The landlord disputes that the tenants had provided a copy of the RTB-49 form when the tenants gave written notice that they were ending the tenancy. The landlord testified that he first saw this form on August 11, 2020. The landlord testified in the hearing that tenants told him he was ending the tenancy due to financial hardship.

The landlord was able to re-rent the rental unit for \$2,150.00 in monthly rent starting May 23, 2020. The landlord is seeking a monetary order in the amount of \$2,200.00 for loss of rental income for the month of April 2020, and \$1,700.00 for loss of rental income for the month of May 2020. The landlord is also seeking the rent differential for the remaining term, which is \$50.00 for a period of 7.5 months.

Item	Amount
Loss of Rental Income April 2020	\$2,200.00
Loss of Rental Income May 2020	1,700.00
Rent Differential. June 2020-January 14, 2021 (\$50.00 x 7.5 months)	375.00
Filing Fee	100.00

Total Monetary Order Requested	\$4,375.00
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The tenants are disputing the landlord's application also on the grounds that the landlord failed to mitigate their losses. The tenant testified that the landlord had rejected a prospective tenant who could have occupied the rental unit sooner, but the landlord had decided not to rent to the tenant due to her professional and lifestyle.

Analysis

Section 44 (1)(a) of the *Residential Tenancy Act* allows a tenant to give a notice under section 45.1 if a tenant or occupant is assessed as requiring long-term care.

Residential Tenancy Policy Guideline #30 states the following:

F. EARLY TERMINATION FOR FAMILY OR HOUSEHOLD VIOLENCE OR LONG-TERM CARE

Under section 45.1 of the Residential Tenancy Act, a tenant may give one month's notice to end a fixed-term tenancy early without financial penalty when fleeing family or household violence or when the tenant has been assessed as requiring long-term care or has been accepted into a long-term care facility. The notice must be accompanied by a confirmation statement that is completed by a person who is eligible to do so under the Residential Tenancy Regulation 10.

A landlord may not apply for dispute resolution to dispute the tenant's eligibility to end to end their tenancy. A landlord may apply for dispute resolution to challenge the eligibility of the third-party verifier.

While the tenants did provide the RTB-49 confirming that the tenants were terminating the tenancy early for long-term care purposes, I am not satisfied that the tenants had ended the tenancy in a manner required by the *Act* and policy guidelines. The tenant's own testimony was that he had left the form on the counter on March 4, 2020, after giving written notice to the landlord on February 29, 2020. The landlord disputes receiving the form on either of those dates. In light of the disputed testimony, I am not satisfied that the tenants provided sufficient evidence to support that they had complied with the requirement that they must provide the RTB-49 along with the notice to end tenancy. As stated above the notice must be accompanied with the confirmation statement.

The evidence is clear that the tenants did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenants ended the fixed-term tenancy

contrary to sections 44 and 45 of the *Act*. I must now consider whether the landlord is entitled to their monetary claim for losses.

The landlord testified that they were able to find a suitable tenant for May 23, 2020, and applied for a monetary claim for the monetary loss of rental income due to the early end of this fixed-term tenancy. The tenants dispute this monetary claim as they feel that the landlord rejected a prospective tenant who could have rented the unit earlier, mitigating the tenants' exposure to further losses.

In screening prospective tenants, the landlord has the right to balance their duty to mitigate their losses and find a suitable tenant for the tenancy. In this case, I have considered the testimony and evidence submitted by both parties. I am satisfied that the landlord had fulfilled their obligations to mitigate their losses, while balancing their right to find a suitable tenant. Accordingly, I allow the landlord's monetary claim of \$4,375.00 for loss of rental income and rent differential for this fixed-term tenancy.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. Accordingly, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The landlord continues to hold the tenants' security deposit of \$1,100.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in partial satisfaction of the monetary claim.

Conclusion

I allow the landlord's monetary claim for \$4,275.00 for monetary losses associated with the early termination of the fixed-term tenancy, as well as \$100.00 for recovery of the filing fee. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

I issue a Monetary Order in the amount of \$3,275.00 in favour of landlord for the remaining portion of the landlord's monetary award.

The landlord is provided with this Order in the above terms and the tenants must be served with a copy of 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 15, 2020

Residential Tenancy Branch