



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent, for loss of rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matters

At the outset of the hearing SC appeared as agent for an occupant, who is not a party to this application. I note occupants have no legal rights or obligation under the Act. Therefore, I have excused SC from the hearing.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent and loss of rent?
Are the landlords entitled to monetary compensation for damages?
Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on September 1, 2019 and was to expire on August 31, 2020. Rent in the amount of \$2,908.00 was payable on the first of each month. The tenants paid a security deposit of \$1,475.00.

The tenants listed in the tenancy agreements are the parents of the occupants living in the premise as the occupants were going to school.

The landlords claim as follows:

a.	Unpaid rent for May 2020	\$ 2,908.00
b.	Loss of rent for June, July and August 2020	\$ 8,742.00
c.	Filing fee	\$ 100.00
	Total claimed	\$11,732.00

Unpaid rent for May 2020

The landlords testified that in April 2020, they were being notified that some of the keys were being dropped off. The landlord stated that they wanted to meet with the tenants to discuss a resolution; however, that did not happen.

The landlords testified that on May 4, 2020, they received a letter by email from the tenants ending their tenancy effective May 1, 2020. The landlords stated that since the notice was given on May 4, 2020, they are entitled to recover unpaid rent for May 2020, in the amount of \$2,908.00.

The landlords testified that they immediately advertised the premise for rent; however, they had no interest in the premises at all and they reduced the rent every two weeks by \$50.00 until it finally reached the amount of \$1,699.00. The landlords stated that on August 19, 2020, they finally found a new renter; however, their tenancy did not commence until September 2020. The landlords seek to recover loss of rent for June, July and August in the amount of \$8,742.00.

The tenant's agent testified that they ended the tenancy due to the pandemic as the premises was rented for their children to attend school and when the pandemic hit, they did not feel safe and wanted to go back home.

The tenants' agent testified that they were never not going to pay the rent owed. The agent stated that they wanted to meet with the landlords to work out a plan. The agent stated that they proposed a plan to the landlords which was that they would pay half the rent for each of the remaining months. The agent stated that the landlords agreed to that if payment was made by May 1, 2020. The agent stated the tenants did not make that payment as they wanted the landlords to apply the security deposit to that amount as they were concerned it would not be returned.

The tenant's agent testified that they also had permission from the landlord to sublet the premise; however, the only potential subtenant they found wanted to stay longer than what was left in their fixed term agreement. The agent stated that they were not give permission to sublet longer than the fixed term agreement.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

I accept that the parties were attempting to reach an agreement prior to this hearing; however, I am satisfied that no agreement was reached or fulfilled. Therefore, I am not considering any evidence or testimony on the issue .

Under section 26 of the Act, rent is due on the date stated in the tenancy agreement which in this matter is on the first of each month. I find rent for May 2020 was already due and owing when the tenants gave notice to end their tenancy on May 4, 2020. You cannot back date the effective date of the notice to end the tenancy. I find the tenants breached the Act, and their tenancy agreement when they failed to pay May 2020 rent.

Therefore, I find the landlords are entitled to recover May 2020, rent in the amount of **\$2,908.00.**

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice (fixed term)

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,

...

In this case, the tenants gave written notice to end their tenancy on May 4, 2020, by email, with an effective date that had passed. However, under the Act the tenants were not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was August 31, 2020 as stated in the tenancy agreement.

In this case, the landlords are claiming loss of rent for June, July and August 2020, which was the remainder of the fixed term tenancy agreement.

Since the tenants failed to comply with the Act by ending their tenancy earlier than the Act allows., the landlords are entitled to an amount sufficient to put the landlords in the same position as if the tenants had not breached the Act. This includes compensating the landlords for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize

the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

I accept the tenants were given permission to sublet for the remainder of their lease, prior to them ending their tenancy; and they were unable to find a subtenant for the remainder of their lease, as it was too short. I accept that the tenants may have found a potential subtenant that wanted a longer agreement, which this request was denied by the landlords. Under the Act a sublease agreement cannot be longer than the fixed term agreement and the landlords had the right to deny such request as this would be contrary to the Act. The tenants would have had to enter into a new fixed term agreement or both parties had to agree to amend their current agreement extending the length of the fixed term. This was not done.

In this case, the evidence of the landlords was that they immediately started to advertise the rental unit and was reducing the rent every two weeks by \$50.00; however, due to the pandemic they had no potential renters until August 19, 2020, and an agreement was entered into at a lower rent of \$2,699.00. I find the landlords made reasonable efforts to minimize the loss. Therefore, I find the landlords are entitled to recover unpaid rent in the amount of **\$8,742.00**.

I find that the landlords have established a total monetary claim of **\$11,732.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$1,475.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$10,257.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. .

Conclusion

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due.

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 11, 2020

Residential Tenancy Branch