



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPN, OPC, MNDL, MNRL-S, FFL

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession for cause based on the 1 Month Notice to End Tenancy for Unpaid Rent (the 1 Month Notice) pursuant to section 55;
- and Order of Possession because the tenant had given their written notice to end this tenancy:
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.
- vacant possession of the rental unit to the landlord pursuant to section 55.

The tenant applied pursuant to section 47 of the *Act* for cancellation of the landlord's 1 Month Notice.

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.

As the tenant confirmed that he they received the 1 Month Notice posted on their door by the landlord on July 28, 2020, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the tenant confirmed that they received both the landlords' written evidence and the landlords' dispute resolution hearing package sent by the landlords by registered mail on August 20, 2020, I find that the

tenant was duly served with these materials in accordance with sections 88 and 89 of the *Act*. The tenant provided no written evidence for this hearing.

The parties agreed that the tenant handed over the keys and vacant possession of the rental unit to the landlords on September 2, 2020. As the landlords already have possession of the rental unit, the landlords withdrew their applications for an Order of Possession. The tenant also withdrew their application to cancel the 1 Month Notice.

As such, the only remaining issues are those involving unpaid rent, the landlords' application to keep the security deposit and the landlords' application to recover their filing fee from the tenant.

The landlords also requested an increase in the monetary award they were seeking from \$1,800.00, the amount owing for August, to \$3,600.00. They asked for this increase because rent became due on September 1, 2020, the tenant did not surrender vacant possession of the rental unit until the following day, and the tenant had refused to allow the landlords to show the rental unit to prospective tenants until after the tenant surrendered vacant possession to the landlords. The landlords maintained that this prevented them from re-renting the premises to new tenants for the month of September 2020. Since the tenant would know that they were responsible for paying rent on the first of each month, and did not surrender vacant possession of the premises to the landlords until September 2, 2020, I allow the landlords' request to increase the amount of their requested monetary claim from \$1,800.00 to \$3,600.00.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

On March 2, 2020, the tenant and Landlord DP (the landlord) signed a one-year fixed term tenancy agreement that was to allow the tenant to reside in this basement suite from March 2, 2020 until February 28, 2021. Monthly rent is set at \$1,800.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$900.00 security deposit paid on March 2, 2020.

The landlord provided undisputed sworn testimony that the tenant has not paid the August or September 2020 rent. The landlords testified that they advertised the availability of the rental suite on three popular rental websites early in August 2020, in an attempt to re-rent the premises for September 2020. The tenant refused the landlords' requests to show the rental unit to prospective tenants on August 13, 2020. The tenant testified that they did so because they were concerned about having prospective new tenants entering the premises during the current global COVID-19 pandemic.

The landlords testified that since the tenant vacated the premises, they have continued advertising the rental suite on the same rental websites, have scheduled some repainting for this week, and have two prospective tenants scheduled to visit the rental unit in the coming days.

The tenant testified that they removed everything from the rental unit on September 1, 2020. They confirmed that they did not release the keys to the landlord until September 2, 2020 because they wanted to ensure that the premises were properly cleaned before they did so. The tenant testified that they believed that they were not responsible for paying rent for September 2020 because they vacated the rental unit in accordance with the landlord's 1 Month Notice.

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.

Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent."

I find that the tenant was in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the February 28, 2021 date specified in that agreement. As such, the landlords are entitled to compensation for losses they incurred as a result of the tenant's failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenant did not pay any rent for August or September 2020. The tenant has not disputed the landlords' claim for unpaid rent owing for August 2020. I issue a monetary award in the landlords' favour in the amount of \$1,800.00 for unpaid rent owing for August 2020.

In considering the landlords' claim for unpaid rent owing for September 2020, I note that section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for September 2020. The tenant's refusal to allow the landlord to show the rental unit hindered the landlords' attempts to minimize the tenant's exposure to the landlords' rental losses for September 2020. Under these circumstances, I am satisfied that the landlord has discharged their duty under section 7(2) of the *Act* to minimize the tenants' loss. However, given that the landlords said that some painting needs to be done and until this can be completed they cannot show the rental unit to prospective tenants, I limit the landlords' entitlement to a monetary award for the month of September 2020 to the first half of that month. Although the tenant overheld the rental unit beyond the August 30, 2020 effective date noted on the 1 Month Notice and remained in possession of the rental unit until September 2, 2020, I find that by September 15, 2020, the landlords could have completed any repairs and painting that would have enabled them to show the rental unit and re-rent the premises to a new tenant by the mid-point in that month. Due to these delays, I find that the landlords are only entitled to recover one-half of their rent for the month of September 2020. I thus allow the landlords a monetary award of \$900.00 for the month of September 2020.

I allow the landlords to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application from the tenant.

Conclusion

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent for August and September 2020 and the filing fee for their application, and to retain the tenant's security deposit:

| Item | Amount |
|---|-------------------|
| Unpaid Rent August 2020 | \$1,800.00 |
| Landlord's Loss of Rent September 2020 | 900.00 |
| Less Security Deposit | -900.00 |
| Recovery of Filing Fee for this Application | 100.00 |
| Total Monetary Order | \$1,900.00 |

The non-monetary aspects of the landlords' application are withdrawn as is the tenant's application.

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 28, 2020

Residential Tenancy Branch