



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTEND RENTAL SOLUTIONS
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, FFL

Introduction

On June 15, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On July 3, 2020, the Landlord amended the Application for Dispute Resolution seeking to increase the amount of monetary compensation being sought pursuant to Section 67 of the *Act*.

H.C. attended the hearing as an agent for the Landlord and S.J. attended the hearing as an agent for the Tenant. All in attendance provided a solemn affirmation.

At the outset of the hearing, S.J. immediately requested an adjournment as the owner of the company was in Central America and was unable to phone in to attend the hearing. He was not sure when this trip was booked. In addition, he advised that another employee of the company was currently attending another Dispute Resolution proceeding at the same time as this hearing and could not attend this one as well.

H.C. advised that she opposed this adjournment request as she has already made the necessary arrangements to attend this hearing. Furthermore, she questioned this request as the only person that she has ever dealt with during the entirety of the tenancy was S.J.

Rule 7.9 of the Rules of Procedure provides the applicable criteria for the granting of an adjournment. Given that this Application was made in June 2020, the Tenant had almost four months to prepare for this hearing. If the owner of the company could not make alternate arrangements to attend the hearing by way of teleconference, the owner should have made plans to have another person attend to represent them. As there was

no evidence provided that this person had made prior plans to be out of country without access to a phone, as there were no attempts prior to the hearing to request an adjournment, and as there were no reasons provided why this specific person was the only person that could attend the hearing, I rejected this adjournment request.

H.C. advised that the Notice of Hearing and evidence package was served to the Tenant by email on June 16, 2020 and S.J. confirmed that the Tenant received this package. Based on this solemnly affirmed, undisputed testimony, I am satisfied that the Tenant has been served the Notice of Hearing and evidence package. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

She also advised that she served the amended Application to the Tenant by email on or around July 3, 2020. S.J. confirmed that the Landlord received this package as well. As the Amendment was served in accordance with the Rules of Procedure, I am satisfied that the Tenant has been served the Landlord's Amendment.

S.J. confirmed that the Tenant did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy started on February 1, 2019 as a fixed term tenancy for 2 years, ending on January 31, 2020¹. However, the Tenant gave up vacant possession of the rental unit on April 3, 2020. Rent was established at \$3,517.80

per month and was due on the first day of each month. A security deposit was not paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

H.C. submitted that S.J. sent the Landlord a notice to end the tenancy on March 31, 2020 but there was no clear date of when the tenancy would end. The Landlord coordinated with the Tenant, and the Tenant gave up vacant possession of the rental unit on April 3, 2020.

She posted this unit for rent immediately on different online platforms. As the Tenant occupied the rental unit for part of the month, the Landlord reduced the monthly rent to \$2,950.00. However, based on the COVID pandemic, there were few prospective tenants. Generally, a rental unit in this location at this reduced price would be very sought after; however, the pandemic also caused a decrease in AirBnB rentals, so the market was flooded with available units. She submitted documentary evidence demonstrating her efforts to re-rent the unit. She stated that it was eventually rented in late July 2020. As a result, she advised that the Landlord is seeking compensation for April, May, and June 2020 rental loss in the amount of **\$10,533.40**.

S.J. advised that he signed the most current tenancy agreement, and that he was provided with the Form K and the strata bylaws. However, he did not realize that the strata had changed their bylaws with respect to time limits on tenancies. Furthermore, he stated that the tenancy was ended because the company had been financially affected by the pandemic and needed to reduce operating costs.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for lost rent of \$10,553.40 for April, May, and June 2020 rent, there is no dispute that the parties entered into a fixed term tenancy agreement from February 1, 2019 for a period of two years, ending January 31, 2021. Yet, the tenancy effectively ended when the Tenant gave up vacant possession of the rental unit on April 3, 2020.

Based on the undisputed evidence before me, I am not satisfied that the Tenant ended the tenancy in accordance with the *Act*. Therefore, I find that the Tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*, and that as a result of their actions, the Landlord suffered a rental loss.

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, in claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

I am satisfied that the Tenant gave the Landlord minimal notification that they were ending the tenancy and vacating the rental unit. As there was no evidence that the Tenant was permitted to end the tenancy early, and as they provided very little notice thereby making it very difficult to re-rent the unit, I am satisfied that the Landlord would have been challenged to re-rent the unit for April 2020.

While neither party can be faulted for how the pandemic affected every aspect of the world, I accept that it was increasingly difficult for the Landlord at this time to find prospective tenants looking to rent a unit. Based on the Landlord's evidence, I am satisfied that H.C. established that she did her best to mitigate this loss and re-rent the unit as quickly as possible, but was unable to until July 2020. Given that the Tenant ended the fixed term tenancy early, contrary to the *Act*, I am satisfied that the Tenant is responsible for April, May, and June 2020 rent. Consequently, I grant the Landlord a Monetary Order in the amount of **\$10,553.40** for the total rental loss of these months.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

April 2020 rental loss	\$3,517.80
May 2020 rental loss	\$3,517.80
June 2020 rental loss	\$3,517.80
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$10,653.40

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$10,653.40** 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 *Residential Tenancy Act*.

Dated: October 7, 2020

Residential Tenancy Branch