



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for compensation for unpaid rent, pursuant to section 67 of the *Act*;
- a monetary order for loss under the *Act*, the regulation or tenancy agreement, pursuant to section 67 of the *Act*;
- an authorization to retain the tenant's security deposit under section 38 of the *Act*; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the *Act*.

I left the teleconference connection open until 2:29 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. The tenant did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on May 28, 2020, in accordance with section 89(1)(c) of the *Act* (the tracking number is recorded on the cover of this decision).

Section 90 of the *Act* provides that a document served in accordance with Section 89 of the *Act* is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on June 02, 2020, in accordance with section 90 (a) of the *Act*.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for compensation for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the tenant's security deposit?
4. an authorization to recover the filing fee for this application

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is his obligation to present the evidence to substantiate her application.

The landlord testified the 12 month fixed-term tenancy started on July 01, 2019 and the tenant abandoned the rental unit on or around December 01, 2019 and the last month for which the the tenant paid rent was November 2019. Monthly rent was \$2,400.00 due on the last day of the prior month. At the outset of the tenancy a security deposit of \$1,200.00 was collected and the landlord still holds it in trust. The tenancy agreement was submitted into evidence. It states:

01.Starting on the 1st day of occupancy, but in any event no later than July 1, 2019, the tenant pays 40% of all utilities.

07. [...] Tenants must park only 2 (max number of vehicles) vehicles (SIC), in their 2 (number of spaces) assigned parking spaces.

08. EXTRA PARKING. Per RTA Regs. S.7(g), additional passenger vehicles are 80.00 per month for parking.

In the beginning of November 2019 the tenant stated he would leave the rental unit by the end of the month. On December 01, 2019 the landlord inspected the rental unit and the tenant was no longer occupying it. On December 03, 2019 the tenant informed the landlord of his forwarding address. The landlord served two notices of final opportunity to schedule a condition inspection (RTB form 22), scheduling the move-out inspection for December 05 and December 08, 2019. Copies of both notices were submitted into evidence. The tenant did not attend the move-out inspection.

On November 01, 2019 the landlord started advertising the rental unit asking for the same rent of \$2,400.00. On November 15, 2019 the landlord reduced the asking price to \$2,295.00. On January 25, 2020 the price was reduced again to \$2,195.00. The

landlord advertised on a popular internet site, a local website and 17 rental tenancy groups on Facebook. The landlord submitted into evidence six receipts for paid advertising:

- \$7.30 on November 23, 2019
- \$26.25 on December 12, 2019
- \$20.85 on December 12, 2019
- \$34.75 on January 07, 2020
- \$26.25 on January 07, 2020
- \$26.25 on February 26, 2020

The landlord affirmed before he accepted the tenant's application he conducted a credit check and inquired with previous landlords about the tenant. The rental unit's monthly rent was within the regular market rate and it is hard to re-rent it during the winter months.

The landlord named 20 possible tenants that visited the rental unit between December 2019 and March 2020, but only one submitted an application. The rental unit was rented for \$2,200.00 on March 28, 2020 and the new tenancy started on April 01, 2020. The landlord is seeking loss of rental income for the months of December 2019 to March 2020, at \$2,400.00 per month and \$200.00 per month for the months of April to June 2020.

The landlord testified two parking spaces were included in the rent. The tenant had three cars parked at the rental unit's driveway in October and November 2019 and although the tenant paid rent for these months, he did not pay for additional parking. Section 07 of the tenancy agreement states an additional parking space is \$80.00 per month.

The tenant left one car parked in the rental unit and this car was towed by the landlord on May 27, 2020. A towing receipt dated May 27, 2020 for \$77.00 was submitted into evidence. The tenant asked the landlord not to remove his car several times between December 01 and May 27, 2020 and threatened to sue the landlord if he removed his vehicle. It was harder to re-rent the unit because there was a vehicle occupying one of the parking spots. The landlord is seeking a compensation in the amount of \$80.00 per month from October 01, 2019 to May 27, 2020, in the total amount of \$640.00 for the cars parked in the rental unit.

The landlord said the smoke detector was working properly when the tenancy started and the tenant removed its internal wiring. A receipt for the smoke detector's repair dated December 07, 2019 for \$94.71 was submitted into evidence.

The landlord kept the rental unit's electric heat in the minimum possible temperature in order for the pipes not to freeze. The electrical bills dated on Jan 28 and March 27, 2020 were submitted into evidence. The tenant's 40% share for both bills totals \$876.44 (474.04+402.42). The landlord is also seeking to obtain a compensation in the amount of \$240.00 for 4 months of septic charges in the amount of \$60.00 per month. The tenancy agreement indicates the tenant is responsible for paying \$60.00 for the septic system every month. The tenant has a credit in the amount of \$11.60 due to the electrical bill due in November 2019 overpayment.

The landlord submitted a prior application which was dismissed with leave to reapply (the file number is on the cover page of this application). A monetary order worksheet dated April 27, 2020 asking for a total compensation in the amount of \$12,383.98 was submitted into evidence.

Analysis

Section 7 of the Act state:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

The testimony provided by the landlord during the hearing was cohesive and convincing.

Section 45 (2) of the Act specifies a tenant can not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the tenancy, which in this case was June 30, 2020. Based on the terms of the tenancy agreement and undisputed testimony, I find the tenant breached the fixed term tenancy by moving out seven months early.

Advertising (items 1 to 6 of the landlord's monetary order worksheet dated April 27, 2020)

I award the landlord the amount of \$144.43 for compensation for compensation for the cost of advertising to re-rent the rental unit prior to the end of the fixed term tenancy.

Smoke detector (item 7)

Section 37(2) of the Act states when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear:

- (2)When a tenant vacates a rental unit, the tenant must
 - (a)leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and
 - (b)give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the undisputed testimony and the smoke detector repair invoice, I find the tenant tampered with the wires of the smoke detector and disabled it requiring it to be repaired. I award the landlord the amount of \$94.71 for compensation for this loss.

Loss of rental income (items 13 and 12)

Based on the landlord's undisputed testimony, I find that due to the tenant abandoning the rental unit on or around December 01, 2019 the landlord incurred a loss of rent income for the months of December 2019 and January to March 2020 in the amount of \$2,400.00 per month (totalling \$9,600.00). I also find the landlord incurred a loss of rental income for the months of April to June 2020 in the amount of \$200.00 per month, as the unit was re-rented on April 01, 2020 at \$2,200.00 per month instead of \$2,400.00 (totalling \$600.00)

Residential Tenancy Branch Policy Guideline 3 sets conditions for loss of rental income claims. It states:

Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

Further to that, Policy Guideline 5 states:

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

1. re-rent the rental unit at a rent that is reasonable for the unit or site; and
2. re-rent the unit as soon as possible.

For example, if on September 30, a tenant gives notice to a landlord they are ending a fixed term tenancy agreement early due to unforeseen circumstances (such as taking a new job out of town) and will be vacating the rental unit on October 31, it would be reasonable to expect the landlord to try and rent the rental unit for the month of November. **Reasonable effort may include advertising the rental unit for rent at a rent that the market will bear.**

If the landlord waited until April to try and rent the rental unit out because that is when seasonal demand for rental housing peaks and higher rent or better terms can be secured, a claim for lost rent for the period of November to April may be reduced or denied.

(emphasis added)

I find the landlord mitigated the losses by paying six times for paid advertising of the rental unit between December 12, 2019 and February 26, 2020 and reducing the price twice.

In accordance with section 7 of the Act, I find the tenant is responsible for the loss of rental income from December 01, 2019 to June 30, 2020. Pursuant to section 67, I order the tenant to pay the landlord \$9,600 for loss of rental income from December 2019 to March 2020 and \$600.00 from April to June 2020.

Utilities (items 8 and 9)

Based on the undisputed testimony, the terms of the tenancy agreement and the utilities electricity bills dated January 28 and March 27, 2020, I award the landlord the amount of \$876.46 for compensation for this loss.

Septic system (item 11)

Based on the undisputed testimony and the terms of the tenancy agreement, I award the landlord the amount of \$240.00 for compensation for the payment of the septic system for the months of December 2019 to March 2020.

Parking (item 14)

The landlord is seeking a compensation in the amount of \$640.00 (\$80.00 per month from October 2019 to May 2020).

Based on the landlord's testimony, I find the tenant parked three cars at the rental unit from October 01, 2019 to November 30, 2019. As such, in accordance with section 08 of the tenancy agreement, I order the tenant to pay the landlord \$160.00 for the parking of an extra vehicle from October 01, 2019 to November 30, 2019.

From December 01, 2019 to March 31, 2020 the tenant parked a single vehicle and this parking was included in the monthly rent. As the landlord is being awarded the loss in rent, no additional compensation for parking is owed. Thus, I dismiss the landlord's application for compensation between December 01, 2019 to March 31, 2020.

From April 01, 2020 to May 27, 2020 the rental unit was re-rented and the tenant still had his car parked at rental unit.

Based on the landlord's testimony, I find the tenant breached section 37 of the Act by not removing his vehicle from the rental unit when he abandoned it.

Residential Tenancy Branch Policy Guideline 16 states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

Pursuant to section 67 of the Act and Residential Tenancy Branch Policy Guideline 16, I award the landlord nominal damages in the amount of \$100.00. Thus, for parking and nominal damages I award the landlord the total amount of \$260.00.

Towing expenses (item 15)

Based on the tenant’s failure to comply with section 37 and notes above, and the towing receipt, I award the landlord the amount of \$77.00 for compensation for removing the tenant’s abandoned vehicle.

Filing fee and set-off

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when the landlord holds the security deposit:

2. The Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord.

As such, the landlord is authorized to retain the \$1,200.00 security deposit to offset the monetary award for losses incurred due to the tenant’ non-compliance with the Act.

In summary:

| Item | Amount \$ |
|--|-----------|
| Advertising | 144.43 |
| Smoke detector | 94.71 |
| Utilities | 876.46 |
| Septic system | 240.00 |
| Loss of rental income (December 2019, and January to March 2020) | 9,600.00 |
| Loss of rental income (April to June 2020) | 600.00 |
| Parking and nominal damages | 260.00 |
| Towing | 77.00 |
| Filing fee | 100.00 |

| | |
|-----------------------------|--------------------|
| Subtotal | 11,992.60 |
| Minus security deposit | -1,200.00 |
| Minus credit | -11.60 |
| Total monetary award | \$10,781.00 |

Conclusion

Pursuant to section 38 of the Act, I authorize the landlord to retain the tenant's security deposit of \$1,200.00 in partial satisfaction of losses incurred and grant the landlord a monetary order pursuant to sections 67 and 72 in the amount of \$10,781.00.

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 *Residential Tenancy Act*.

Dated: October 05, 2020

Residential Tenancy Branch