



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL

Introduction

The landlord filed an Application for Dispute Resolution on June 16, 2020 seeking an order to recover monetary loss of unpaid rent. Additionally, they applied for the cost of the hearing filing fee.

The matter proceeded by way of a hearing on October 6, 2020 pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”). In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the hearing. The tenant did not attend and did not provide documentary evidence prior to this hearing. In the hearing the landlord confirmed they delivered notice of this hearing and their prepared evidence to the tenant. They stated the tracking number for Canada post showed receipt of the registered mail on June 19. They also provided notice of this hearing and their evidence to the tenant via email, on a frequently used and established email account that was a channel of communication in the past.

In consideration of the evidence presented by the landlord, and with consideration to section 89 of the *Act*, I find the tenants were sufficiently served with notice of this hearing, as well as the landlord’s evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement for this hearing and spoke to the terms. The tenant and landlord signed the agreement for the tenancy that started on June 1, 2019. The agreement specified a fixed-term tenancy ending on May 31, 2020. The monthly rent was \$950.00 per month. The tenants paid a security deposit of \$475.00.

The agreement contains the following clauses:

- At the end of this fixed length of time, the landlord and tenant may agree to enter into a new tenancy agreement.
- If the landlord and tenant do not enter into a new tenancy agreement, the tenant must move out on or before the last day of the tenancy.
- The leasing agreement can be renewed at the end tenancy term, subject to landlord's agreement.

The landlord provided an image showing a message between them and the tenant dated April 20, 2020. In this message the landlord states: "Also let us know if u leaving and of May. So that you can give us a month and half notice." The tenant's response to this was "I believe I'm leaving yes just haven't decided for sure about taking over the other place or not yet."

The landlord communicated with the tenant on May 31, 2020. This was the day the tenant decided to leave with no notice to end the tenancy. On this day the tenant did not return the keys, and then tenant said "I'm a first-time tenant, I had no idea" in regard to a notice to end tenancy and a proper move out. The tenant stated they would meet on June 1, and the landlord had to wait until 5pm for the tenant to arrive to a meeting.

The landlord informed the tenant that they were not able to re-rent the unit to new tenants for the month of June. The tenant at that time reiterated that they were essentially a first-time renter and did not know how a tenancy works.

The landlord claims the full amount of June rent, for \$950.00. On their Application, they noted that the tenant "decided to leave on May 31, 2020". This was without an "end of tenancy notice." The tenant did not return the keys on May 31 and requested to meet with the landlord "around 5pm" on June 1. At this time, the landlord advised that the month of June had already started, and "[they] owed me [the] month of June rent."

On their Application, the landlord noted "There was extensive damages in the apartment as well. But I'm willing to use the damage deposit against that."

The tenants did not attend the hearing and did not provide documentary evidence prior to the hearing date.

Analysis

From the testimony of the landlord I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rental amount and the amount of the deposit paid. The tenants did not attend the hearing; therefore, there is no evidence before me to show otherwise.

The *Act* section 45 sets out how a tenant may end a tenancy:

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, that rent is payable under the tenancy agreement.

In this case, the landlord presented that the tenant breached the tenancy agreement by abruptly ending the tenancy on May 31, 2020. I find the tenant held over the end of tenancy until the following day. Under the *Act*, the tenant was not entitled to give notice to end the tenancy for an effective date that was earlier than one month. Here, the tenant did not give the landlord proper notice. Under the *Act*, they are obligated to do so.

The evidence shows the landlord made the inquiry on the end of tenancy on April 20, 2020. There is no record that the tenant advised the landlord of either ending the tenancy or their desire to continue.

On my review of the tenancy agreement, it notes that if the landlord and tenant do not enter another agreement, the tenant “must move out on or before the last day of the tenancy.” The parties did not reach an agreement; therefore, as per the agreement the tenant was obligated to move out on the last day, May 31, 2020.

I find a remedy is in order where the tenant breached the *Act*. In the hearing, the landlord amended their claim to apply the security deposit to the June rent amount. I allow the amendment, and award the amount of June rent, reduced by the amount of the security deposit. I find the landlord applied within the legislated timeline to keep the security deposit for

the purpose of amounts owing. This award for damages is an amount sufficient to put the landlord in the same position as if the tenant did not breach the agreement.

I find the landlord is entitled to the whole of June rent, for the total of \$950.00.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$950.00. After setting off the security deposit amount of \$475.00, there is a balance of \$475.00. I am authorizing the landlord to keep the security deposit amount and award the balance of \$475.00 as compensation for rent owing.

As the landlord is successful, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$575.00. The landlord is provided with this Order in the above terms and the tenants must be served with **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 *Act*.

Dated: October 7, 2020

Residential Tenancy Branch