



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LONG LAKE LIFESTYLES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCL-S, FFL

Introduction

This hearing dealt with the reconvened Landlord's Application filed under the *Residential Tenancy Act* (the "Act") for a monetary order for damages or compensation under the Act, for permission to retain the security deposit, and to recover the cost of the filing fee for this application. The matter was set for a conference call.

One of the Tenants and the Landlord attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

The Tenant attended the first 10 minutes of this hearing and then disconnected, stating that they needed to get back to work. The Tenant's decision to disconnect caused the Tenant to not be present for the last 11 minutes of the hearing, missing all of the Landlord's testimony.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for damages under the Act?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement shows that these parties entered into a month-to-month tenancy on January 2, 2020, with an agreed to start of tenancy date of February 1, 2020, and a monthly rent in the amount of \$1,495.00. The parties agreed that the Landlord was paid a security deposit of \$750.00 when the tenancy agreement was signed. The Landlord provided a copy of the tenancy agreement into documentary evidence.

Both parties testified that the Tenant contacted the Landlord on January 24, 2020, seven days before the tenancy was set to begin, advising the Landlord that they would not be moving into the rental unit, and ending their tenancy.

The Landlord testified that they took immediate steps to secure another renter for the rental unit and that they were able to find someone to take the rental unit as of February 1, 2020. The Landlord also testified that in order to secure this another renter at such short notice they had to accept a reduced rent for February 2020, of \$895.00. The Landlord testified that they are claiming for the recovery of their lost rental income for February 2020, in the amount of \$600.00

The Tenant argued that it was the Landlord's choice to accept a lower amount of rent for February 2020 and that they should have kept looking for a renter that would pay the full amount.

The Landlord testified that they had to travel back to the area in order to interview the new renter for the rental unit at the cost of \$475.90. The Landlord is requesting to recover their expenses associated with securing the new renter to take over this tenancy at short notice, under the liquidated damages clause in the tenancy agreement. The Landlord submitted their travel receipts into documentary evidence.

The Tenant argued that it is not their responsibility that the Landlord was out of town when they gave their notice and that they should not be responsible for the Landlord's travel expenses.

Analysis

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

I have reviewed the tenancy agreement signed between these parties and I find that these parties entered into a month-to-month tenancy set to begin on February 1, 2020. I accept the agreed-upon testimony of these parties that the Tenants notified the Landlord of their intent to not move in and end this tenancy, effective immediately, on January 24, 2020. Section 45 of the *Act* sets out the conditions for a tenant's notice to end a tenancy, stating the following:

Tenant's notice

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.

Pursuant to section 45 of the *Act*, I find that this tenancy could have ended, in accordance with the *Act*, unit February 29, 2020. Accordingly, I find that the Tenants breached the *Act* when they failed to provide the Landlord with the required one month's notice to end their tenancy agreement.

In this case, the Landlord is requesting compensation, in the amount of \$600.00 to recover their loss in rental income for February 2020, and \$475.90 in liquidated damages.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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. 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.”

I accept the Landlord’s testimony that they took immediate steps to minimize their losses by securing a new renter for the rental unit for February 1, 2020. I also find that it was a reasonable action of this Landlord to accept a reduced rent for February 2020 from the new renter in order to secure someone to take over this tenancy.

I accept that the Landlord’s testimony and find that the Landlord suffered a loss of rental income in the amount of \$600.00 due to the Tenants’ breach of the *Act*. Therefore, I award the Landlord the recovery of their loss of rental income for February 2020, in the amount of **\$600.00**.

The Landlord has also requested to recover their costs to secure a new renter for the rental unit, in the amount of \$475.90. I have reviewed the tenancy agreement signed between these parties, and I noted that these parties had agreed to a liquidated damages clause in the amount of \$750.00 for this tenancy. I accept the Landlord’s testimony supported by their documentary evidence that the requested \$475.90 is an accurate account of the Landlord’s true costs to re-rent the rental unit following the Tenants’ breach of this tenancy agreement. Therefore, I award the Landlord \$475.90 in liquidated damages.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

Pursuant to sections 38, 67 and 72 of the Act, I grant the Landlord a monetary order in the amount of \$425.90. The Order is comprised of \$600.00 in the loss of rental income, \$475.90 in liquidated damages and \$100.00 in the recovery of the filing fee for this application, less the \$750.00 that the Landlord is holding in a security deposit for this tenancy.

Conclusion

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$425.90**. 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 *Residential Tenancy Act*.

Dated: November 18, 2020

Residential Tenancy Branch