



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlords' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation for damage under the Act in the amount of \$3,500.00, retaining the security deposit for this claim; and to recover the \$100.00 cost of their Application filing fee.

The Tenants, J.E. and H.B., and the Landlords, L.V. and S.V., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Are the Landlords entitled to a monetary order, and if so, in what amount?
- Are the Landlords entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on July 15, 2020, running to July 15, 2021, and then operating on a month-to-month basis. They agreed that the Tenants were to the Landlords a monthly rent of \$3,400.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlords a security deposit of \$1,700.00, and a pet damage deposit of \$1,700.00.

The Landlords said that the Parties entered the tenancy agreement on June 16, 2020, but that the Tenants breached the contract on June 20th, by informing the Landlords that they had changed their minds and did not want to move in, after all.

The Landlords make two claims in their Application, the first for a loss of income from July 15, 2020, when the Tenants were going to move in, to July 31, 2020, the day after which the new tenants are moving in. The Tenants would have paid the Landlords \$1,700.00 for the second two weeks of July 2020.

The Landlords also claimed that the Tenants owe them for lost revenue, because the new tenant is paying \$150.00 less rent per month. The Landlords said that this amounts to \$1,800.00 over the term of the year lease that the Tenants cancelled.

#1 BREACH OF CONTRACT AND LOSS TWO WEEKS' RENT → \$1,700.00

The Landlords said they made their "best efforts" to find new tenants at the same rent amount and start date, but that the best they could do was to find new tenants for August 1, 2020, at \$3,250.00 per month in rent. The Landlords said that they lost two weeks of rental income revenue for July 15th to the 31st, in the amount of \$1,700.00 with the tenancy agreement breach.

The Landlords said that they relisted the property on an international advertising platform, but they were not able to find new tenants for July 15, 2020, when the Tenants were scheduled to move in and start paying rent.

The Tenants said:

They're all true facts. The listing was on the 21st and the new contract was received by the Landlord was on the 24th, so it was just posted for 3 days before getting a new tenant's signature.

The Landlords said:

We simply tried to get a tenant ASAP – nobody was willing and able to move by July 15. They were all looking for August 1st. When you post it after the 15th, it takes a longer time to find someone for the beginning of the next month.

No one was interested at the original rent. We tried to get people who had visited before to see if they were able to take it, but they were in another tenancy

The Tenants said:

I didn't see anything in the documents re an attempt to get prior interested parties involved. In an email they said that there were a couple of other people at the same price and time, so my argument was we tried to get one of these.

The email to which the Tenants referred was from the Landlord, L.V., to the Tenant, J.E., dated June 16, 2020. The email states:

Hi [J.]

Great news, we were able to get a hold of your references and would love to offer you guys the property. That being said, we do have two other groups that are keen on taking the property if you don't.

. . . The back up tenants are all willing to take it as well. Please advise.

. . .

#2 LOSS OF RENT @ \$150.00/month over 12 months → \$1,800.00

The Landlords said that their search for new tenants was all done on an international advertising site.

The Tenants said:

It comes back to the same point that we are looking at on [the advertising site] for a total of four days, I understand speed, but there were two other interested parties at that price. We advertised a week after, no other. I know there's a \$150.00 difference, but where would that stop. If they had reduced it to \$3,000.00, would we be on the hook for \$400.00 a month? It's not helpful if you advertise for an extended amount of time on [the advertising site], but I don't think three days is enough for that to happen.

The Landlords said:

We tried as quick and as best as possible to find a tenant at the same price. We can't respond . . . there weren't any people who were interested anymore. If we waited longer to find someone with the same amount, it could lead to further losses, anyway.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I advised them on how I would be analyzing the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In your case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

("Test")

RTB Policy Guideline #3 sets conditions for loss of rental income claims. It states:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating

the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

For example, a tenant has agreed to rent premises for a fixed term of 12 months at rent of \$1000.00 per month abandons the premises in the middle of the second month, not paying rent for that month. The landlord is able to re-rent the premises from the first of the next month but only at \$50.00 per month less. The landlord would be able to recover the unpaid rent for the month the premises were abandoned and the \$50.00 difference over the remaining 10 months of the original term.

Further, Policy Guideline #5: “Duty to Minimize Loss” states:

A. LEGISLATIVE FRAMEWORK

Under section 7 of the *Residential Tenancy Act* (RTA) . . . , if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for resulting damage or loss.

A landlord or tenant claiming compensation for damages or loss has a legal obligation to do whatever is reasonable to minimize the damage or loss.

. . .

Loss of Rental Income

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.

#1 BREACH OF CONTRACT AND LOSS TWO WEEKS' RENT → \$1,700.00

Section 16 of the Act sets out parties' rights and obligations that arise upon the parties signing a tenancy agreement.

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

[emphasis added]

Further, section 45 sets out the means by which a tenant may end a fixed term tenancy.

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.

...

[emphasis added]

I find that the Tenants breached a fixed term tenancy agreement by not moving in, pursuant to the tenancy agreement. I find that that the Landlords suffered a loss of rental income, as a result of this breach. I find the value of the loss incurred by the Landlords is two part. First, I find that the Landlords went without rental income for July 15 through July 31, 2020, for a total of \$1,700.00 in lost rental income. I find that the Landlords tried to mitigate their loss by advertising the day after they found out about the Tenants' breach of the tenancy agreement. I also find that the Landlords sought to

contact previous potential tenants, who were interested in the rental unit at the same time and for the same rent as when the Tenants applied for this tenancy. I, therefore, find that the Landlords tried to minimize their losses by seeking tenants as soon as possible and from different sources.

I find the Landlords have satisfied their burden of proof in this matter, having satisfied the four steps of the Test noted above that an applicant must prove in establishing a monetary claim. I find that the Tenants are liable for the Landlords' lost income for the last two weeks of July 2020 in the amount of \$1,700.00. I, therefore, award the Landlords **\$1,700.00** from the Tenants, pursuant to section 67 of the Act.

#2 LOSS OF RENT of \$150.00/month over 12 months → \$1,800.00

I also find that the Tenants' breach of the tenancy agreement has led to a loss of monthly income for the Landlords for the months of August 2020 through July 15, 2021.

I find the four steps of the Test analyzed in the last section are equally applicable to this claim, as they relate to the Landlords' efforts to find a new tenant for the same rent as was set out in the Tenants' tenancy agreement. I, therefore, find that the Tenants are responsible for compensating the Landlords for the loss of income in this category, as well as the last.

However, since the Landlords received the full amount anticipated for July 2020, given the last award, I find that their' claim in this section is appropriate for 11 months, rather than 12 months. Accordingly, I award the Landlords with **\$1,650.00** from the Tenants for this category, pursuant to section 67 of the Act.

The Landlords are successful in their Application in the amount of **\$3,350.00**

Summary and Set Off

I find that these awards meet the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security and pet damage deposits totalling \$3,400.00, in full satisfaction of the Landlord's monetary awards. I also award the Landlords with recovery of the \$100.00 Application filing fee for a total award of \$3,450.00.

I authorize the Landlords to retain the Tenants security and pet damage deposits of \$1,700.00 each, which satisfies all but \$50.00 of the Landlords' awards. I, therefore, grant the Landlords a Monetary Order from the Tenants of **\$50.00** in satisfaction of

the remaining amount of the Landlords' awards in this matter.

Conclusion

The Landlords are successful in their Application for compensation from the Tenants in the amount of \$3,350.00. I also award the Landlords with recovery of the \$100.00 Application filing fee for a total award of **\$3,450.00**.

I authorize the Landlords to retain the Tenants' security and pet damage deposits totalling \$3,400.00, in partial satisfaction of the Landlords' awards. I grant the Landlords a Monetary Order of **\$50.00** from the Tenants for the remaining amount owing to the Landlords for their awards after set-off.

This Order must be served on the Tenants by the Landlords and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 17, 2020

Residential Tenancy Branch