



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant acknowledged receipt of evidence submitted by the landlord. The tenant did not provide any documentation for this hearing. Both parties gave affirmed testimony.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

Both parties agreed to the following facts. This tenancy began on October 15, 2019 and ended on June 30, 2020. Monthly rent in the amount of \$2200.00 was payable on the first day of each month. The parties agreed to have a tenancy from October 15, 2019 to October 31, 2020. A security deposit of \$1100.00 was paid by the tenant and the landlord continues to retain this deposit.

The landlord seeks a monetary order of \$3200.00 plus the \$100.00 application filing fee. The tenant disputes the landlord's entire application.

The landlord seeks \$2200.00 for a loss of rent for July 2020. She said that the tenants breached their fixed term tenancy agreement and moved out early. The landlord testified that the tenant provided notice in mid May 2020 and moved out early in June but paid for the entire month of June. The landlord testified that the unit was empty for the month of July but was able to rent it for August at a reduced rent of \$2000.00 per month.

The landlord seeks \$400.00 in liquidated damages because the tenants breached their fixed term tenancy agreement. She stated that this provision was contained in paragraph 7 of the parties' written tenancy agreement. The landlord is also seeking \$600.00 rent shortfall for having to rent the unit at a lower rate for the months of August, September, and October.

The tenant disputes the landlord's application. The tenant testified that he was under the impression that the landlord released him from the fixed term due to him losing his job because of COVID – 19. The tenant testified that he had asked for some relief from the landlord and he would have made up for the shortfall but was denied. The tenant testified that he was left with no option but to move.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Rent Loss

I find that the landlord and tenant entered into a fixed term tenancy for the period from October 15, 2019 to October 31, 2020. Both parties signed the written tenancy agreement and a copy was provided for this hearing.

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

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.

The above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlord. In this case, the tenant ended the tenancy on June 30, 2020, prior to the end of the fixed term on October 31, 2020. I find that the tenants breached the fixed term tenancy agreement. As such, the landlord may be entitled to compensation for losses it incurred as a result of the tenants' failure to comply with the terms of the tenancy agreement and the Act.

Section 7(1) of the Act establishes that tenants who do not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the Act places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the Act to do whatever is reasonable to minimize that loss.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's application for July 2020 rent loss of \$2,200.00, without leave to reapply. I find that the landlord failed to provide documentary evidence including copies of rent advertisements, to show when it was advertised for re-rental, what details were given, or how long the unit was advertised for. The landlord also failed to provide documentary evidence to indicate how many inquiries were made for re-rental, how many showings were done, and when they were done.

I find that the landlord failed to show how it properly mitigated losses in efforts to re-rent the unit.

Liquidated Damages

Residential Tenancy Policy Guideline 4 provides information regarding liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

I find that the cost of re-renting a unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants, numerous times. In this case, the landlord did not provide copies of any advertisements posted to re-rent the unit. The landlord did not know how many inquiries were answered for the unit or how many showings of the unit were done. The landlord also did not know how the above amount was a genuine pre-estimate of the loss.

Although the tenants vacated the rental unit prior to the end of their fixed term on October 31, 2020, I find that the landlord did not show how the \$400.00 claimed for liquidated damages in paragraph 4 of the tenancy agreement was a genuine pre-estimate of the loss. For the above reasons, I dismiss the landlord's claim of \$400.00 for liquidated damages without leave to reapply.

As the landlord was unsuccessful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the tenant.

Security Deposit

The landlord continues to hold the tenants' security deposit of \$1100.00. Over the period of this tenancy, no interest is payable on the tenants' security deposit. Although the tenants did not apply for the return of their deposit, I must deal with the deposit if the landlord has applied to retain it, as per Residential Tenancy Policy Guideline 17.

Accordingly, I order the landlord to return the tenants' entire security deposit of \$1100.00. The tenant is provided with a monetary order for same.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$1100.00 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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 02, 2020

Residential Tenancy Branch