



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNRL-S, FFL

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with their application and evidence by registered mail sent on or about July 11, 2020. Based on the landlord's testimony I find the tenant is deemed served with the landlord's materials on July 16, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain the deposit for this tenancy?

Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This fixed-term tenancy began on January 15, 2020 and was scheduled to end on January 31, 2021. Monthly rent was \$1,700.00 payable on the first of each month. A security deposit of \$850.00 was collected and is still held by the landlord.

The tenant gave written notice to end the tenancy on May 27, 2020 and vacated the rental unit by June 30, 2020 providing a forwarding address on that date. The landlord testified that they began advertising the rental unit and seeking a new tenant upon being given notice. The landlord submits they were able to find a new occupant commencing August, 2020. The landlord seeks loss of rental income in the amount of \$1,700.00, the equivalent of one month's rent.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord 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."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

In the present case the parties agree that the tenants gave notice to the landlord to end the tenancy on May 27, 2020. The evidence shows that the landlord instructed their

agent to begin advertising the rental unit on that date. However, there is little evidence of the steps that the landlord or their agent took in seeking a new occupant to mitigate any rental income losses. There are no advertisement postings or correspondence with prospective tenants. I find little evidence was provided of the steps taken or what response was received after the initial advertisement. What correspondence was submitted are between the landlord and the tenant where the landlord makes clear that they require a tenant they deem to be "suitable". Little details are provided as to what criteria the landlord employs to deem a potential tenant to be suitable.

Based on the evidence, while I find that the tenant breached the fixed-term tenancy agreement by ending it before its full term, I find that the landlord has not demonstrated that the full amount of the loss incurred are due to the tenant rather than contributed to by the landlord's failure to take steps to mitigate their losses. The landlord submits that they were eventually able to find a new occupant to commence in August, 2020. I do not find it reasonable, given the state of the rental housing market, that the landlord was not able to find a new occupant after being provided nearly eight weeks' notice.

I find that the landlord suffered some losses due to the early breach of the fixed term agreement but not the full amount claimed in their application. I find the majority of the loss incurred is attributable, not to the tenant, but the landlord's failure to take reasonable steps to find a new occupant. I find that a monetary award of \$750.00, slightly less than $\frac{1}{2}$ of the monthly rent is an appropriate value of the loss suffered by the landlord due to the tenant.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in full satisfaction of the monetary award issued in the landlord's favour

Conclusion

The landlord is authorized to retain the full security deposit for this tenancy of \$850.00, in satisfaction of a monetary award for losses and recovery of the filing fee.

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 2, 2020

Residential Tenancy Branch