Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCL, FFL**

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $2,650 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was assisted by a translator ("**SL**") and her son ("**MZ**"). The landlord was assisted by her daughter ("**MC**").

Preliminary Issue – Service of Documents

The landlord testified and the tenant agreed that the landlord served the tenants with dispute resolution proceeding package and supporting evidence. I deem that the tenant has been served in accordance with the Act.

MZ testified that the tenant sent the landlord her documentary evidence on October 31, 2020 by regular mail. He testified that the postal worked advised her that it would take "two or three days" to arrive at the destination.

The landlord testified that she did not receive any documents from the tenant.

Rule 3.15 of the RTB Rules of Procedure states:

> The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. […] the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

So, even if the tenant's evidence was delivered on the same day the tenant gave it to the post office, it still would have been two days late.

The tenant provided her documentary evidence to the RTB on October 7, 2020, almost one month before the hearing. The tenant did not state why she did not provide her evidence to the landlord at this time.

The landlord would be significantly prejudiced if I were to consider the tenant's evidence even though it had not been served on her, as she would be denied an opportunity to provide a considered response.

Accordingly, as the tenant failed to provide her documentary evidence to the landlord within the permitted time, or at all, I decline to admit it into the evidentiary record.

Issues to be Decided

Is the landlord entitled to:

1) a monetary order for $2,650; and
2) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement starting August 19, 2019 and ending August 31, 2020. Monthly rent was $1500 and is payable on the first of each month. The tenant paid the landlord a security deposit of $1000. The parties advised me that the return of the security deposit was the subject matter of a prior hearing, that the landlord has been ordered to return it on a payment schedule.

The parties agree that, on April 2, 2020 the tenant notified the landlord of her intention to vacate the rental unit by April 30, 2020 via a text message sent by WeChat. A copy of this message, and its English translation, was entered into evidence by the landlord.

The tenant testified that she intended to give the landlord notice of her intention to vacate on March 31, 2020 via a written letter, but that she could not find anyone to witness it due to the COVID-19 pandemic.

MZ testified that the tenant gave notice to end the tenancy for three reasons:

1) the heat in the rental unit was always kept at 18 degrees, which caused him to become sick;
2) the landlord did not let the tenants turn the lights on in the house until after 7:00 pm in order to save on electricity; and

3) the landlord was verbally abusive to the tenant and himself, which caused them both mental anguish.

The landlord denied these allegations and called a former tenant ("**KZ**") who lived in the residential property from November 30, 2019 to October 31, 2020 as a witness. KZ testified that the residential property was always kept at a reasonable temperature, and that the landlord had offered to provide her with an electric space heater for her own use if it got too cold. KZ gave no evidence as to the light restrictions or the alleged verbal abuse.

The landlord testified that as soon as the tenant vacated the rental unit, she posted the rental unit for rent. She provided postings dated May 2, 9, and 10, 2020 corroborating this. She testified that she had difficulty renting it out (she submitted screenshots of text messages exchanges with prospective tenants which did not end up renting the unit), and she hired a rental agent to locate a new tenant, at a cost of $400. She submitted copies of two e-transfers to the agent, for $200 each.

The landlord testified that the agent obtained a new tenant who could move into the rental unit on June 15, 2020. The landlord provided a copy of a new tenancy agreement corroborating this.

The landlord seeks a monetary order for $2,650 representing the following:

1.5 months of lost rent (May 1 to June 15, 2020)	$2,250
Rental Agent Fee	$400
Total	**$2,650**

Analysis

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> 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. In order to determine whether compensation is due, the arbitrator may determine whether:
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> - 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.
>
> (the "**Four-Part Test**")

Sections 45(2) and (3) of the Act state:

> **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.
> (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application

So, the landlord must prove that it is more likely than not that the tenant breached section 45 of the Act, that she suffered a quantifiable loss as a result, and that she acted reasonably to minimize her loss.

The tenancy agreement was for a fixed term ending August 31, 2020. The tenant ended the tenancy before this term was finished. As such, the timing of when the tenant sent her notice to end the tenancy to the landlord is not significant (that is, whether the tenant intended to serve it on March 31, 2020 or not). The tenant was not permitted to end the tenancy prior to August 31, 2020 unless the conditions of section 45(2) were met.

MZ testified that he and the tenant complained of the lighting and heating issues to the landlord. However, he did not testify that the tenant every gave the landlord written notice altering the landlord that she considered these deficiencies (or the verbal abuse) to be a breach of a material term of the tenancy agreement and advising her if they were not fixed by a certain date, that the tenant would end the tenancy. As such, there is nothing in the evidentiary record which would suggest that the tenant met the section 45(3) requires to end a fixed term tenancy early.

As such, the tenant failed to end the tenancy in accordance with the Act.

As a result of the breach, I find that the landlord lost the ability to collect rent on the rental unit from May 1, 2020 to June 15, 2020, in the amount of $2,250.

I also find that the landlord incurred a $400 cost to hire a rental agent to re-let the property.

I find that the landlord acted reasonably to minimize her loss. I find that she posted the rental unit for rent promptly after the tenant vacated, and that, in light of the difficulties she had in securing a tenant, it was reasonable for her to engage a rental agent.

Accordingly, I order that the tenant reimburse the landlord these amounts.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, she may recover their filing fee from the tenant.

Conclusion

Pursuant to sections 67, and 72 of the Act, I order that the tenant pay the landlord $2,750, representing the following:

Loss of rent (May 1 to June 15)	$2,250.00
Rental agent fee	$400.00
Filing fee	$100.00
Total	**$2,750.00**

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 5, 2020

Residential Tenancy Branch