



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL
 MNSD, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Landlords’ Application for Dispute Resolution was made on July 14, 2020. The Landlord applied for a monetary order for unpaid rent, permission to retain the security deposit and to recover their filing fee.

The Tenants’ Application for Dispute Resolution was made on September 30, 2020. The Tenants applied for the return of their security deposit and the return of their filing fee.

One of the Landlords attended the hearing and was affirmed to be truthful in their testimony. As the Tenants did not attend service of the Notice of Hearing documents was considered. As the Tenants are also the applicants in this hearing, I find that the Tenants had been duly notified of the Notice of Hearing in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

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

- Are the Landlords entitled to monetary order for unpaid rent?
- Are the Landlords entitled to retain the security deposit in partial satisfaction of the claim?

- Are the Landlords entitled to recover the cost of the filing fee?
- Are the Tenants entitled to the return of her security deposit?
- Are the Tenants entitled to recover the cost of the filing fee?

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 this tenancy began on March 1, 2020, as a one-year fixed term tenancy that rolled into a month to month after the first year. Rent in the amount of 1,300.00 was to be paid by the first day of each month and at that the enants had paid a \$650.00 security deposit at the outset of the tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that this tenancy ended as of June 30, 2020, when the Tenants gave notice and vacate the rental unit.

The Landlord testified that when they learned that the Tenants would be ending their tenancy early, they immediately started looking for a new renter to take over the rental unit. The Landlord testified that they secured a new rented for the unit as of August 1, 2020. The Landlord is requesting to recover their lost rental income for July 2020, due to the Tenants ending their tenancy early.

Analysis

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

Section 45(2)(b) of the *Act* states that a tenant cannot end a tenancy agreement earlier than the date specified in the tenancy agreement.

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.

I have reviewed the tenancy agreement signed between these parties, and I find that this tenancy could not have ended, in accordance with the Act, until February 28, 2021. I accept the undisputed testimony of the Landlord that the Tenants ended their fixed term tenancy as of June 30, 2020. I find that the Tenants breached section 45(2b) of the Act when they ended their tenancy before the contract end of tenancy date, as of June 30, 2020.

In this case, the Landlords are requesting a month's rent, in the amount of \$1,300.00, in compensation for lost rental income for July 2020. 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 find that the Tenants' breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord for July 2020. I also find that the Landlords have provided sufficient evidence to prove the value of that loss and that they took reasonable steps to minimize the losses due to the Tenants' breach. Therefore, I find that the Landlords have established an entitlement to the recovery of the loss of rental income for July 2020. Accordingly, I award the Landlords \$1140.00 in the recovery of their lost rental income

for July 2020. I grant permission to the Landlord to retain the security deposit for this tenancy in partial satisfaction of this award.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords have been successful in this application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for their application.

Overall, I find for the Landlords and grant them a monetary order in the amount of \$750.00; consisting of \$1,300.00 in rent recovery for July 2020, and \$100.00 to recover the filing fee for this hearing, less \$650.00 security deposit they are holding for this tenancy.

Conclusion

I find for the Landlords under sections 67 and 72 of the *Act*. I grant the Landlords a **Monetary Order** in the amount of **\$750.00**. The Landlords are 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.

I dismiss the Tenants' application without leave to reapply.

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