



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BCIMC REALTY CORPORATION QUADREAL RESIDENTIAL
PROPERTIES LP and [tenant name suppressed to protect privacy]

DECISION

MNDCL, FFL; MNSD, FFT
Dispute Codes

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- authorization to obtain a return of the tenants' security and pet damage deposits (collectively "deposits"), pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The landlord's two agents, landlord LN ("landlord") and "landlord MN" and the two tenants, male tenant ("tenant") and "female tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord MN and the female tenant did not testify at this hearing. This hearing lasted approximately 30 minutes.

The landlord confirmed that her and landlord MN were both employed by the landlord company QRPL and that it was the property management company for the landlord owner company BRC, both named in this application. She stated that she and landlord MN had permission to speak on behalf of both companies at this hearing (collectively "landlords"). The tenant confirmed that he had permission to represent the female tenant at this hearing (collectively "tenants").

This hearing began at 1:30 p.m. with all parties present. The tenants unexpectedly disconnected from the hearing at 1:41 p.m. and called back immediately, stating that they lost telephone reception. I notified the tenants about what occurred in their absence, as no evidence was discussed with the landlords.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Both parties confirmed that they were ready to proceed with this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the legal name of the landlord company QRPL. The landlord confirmed the legal name during the hearing. Both parties consented to this amendment during the hearing.

Issues to be Decided

Are the landlords entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to a return of their deposits?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on January 10, 2020 for a fixed term ending on January 31, 2021. The tenancy ended on July 31, 2020. Monthly rent of \$2,875.00 was payable on the first day of each month. A security deposit of \$1,437.50 and a pet damage deposit of \$1,437.50 were paid by the tenants and the landlords continue to retain both deposits. Both parties signed a written tenancy agreement. Move-in and move-out condition inspection reports were completed for this tenancy. The tenants provided a written forwarding address to the landlords on July 27, 2020, by way of an email. On July 28, 2020, the tenants provided

written permission for the landlords to keep both deposits totalling \$2,875.00, to pay for a \$100.00 cleaning fee and August 2020 rent of \$2,775.00. The tenants paid a \$500.00 lease break fee to the landlords for breaching the fixed term tenancy agreement and moving out early.

The landlords seek a monetary order of \$2,875.00 plus the \$100.00 application filing fee. The landlords seek a one-month rent loss of \$2,875.00 for September 2020. The landlord stated that the landlords were unable to re-rent the unit from August 1 to October 31, 2020, because the tenants breached the fixed term tenancy agreement and moved out earlier on July 31, 2020, instead of the end date of January 31, 2021. She said that the tenants provided written notice to the landlords on June 19, 2020 to vacate first on July 20, 2020 and then changed it to July 31, 2020. She maintained that advertisements were posted online, showings were done, it was a slow summer and difficult to rent during the covid-19 pandemic. She agreed that the tenants paid a \$500.00 lease break fee and August 2020 rent loss, but the landlords are entitled to seek for two months of rent loss, as a company policy and the tenancy agreement, which says they can charge for rental income. She confirmed that the landlords re-rented the unit to new tenants on November 1, 2020, for a fixed term of one year, at a monthly rent of \$2,600.00 per month.

The tenants dispute the landlords' application. The tenant stated that the tenants underwent mental stress, due to noise allegations made against them by the landlords. He said that a lot went into the tenants' decision to move out early and break the fixed term lease. He claimed that the tenants already paid the \$500.00 lease break fee and one month rent for August 2020, so they do not agree to pay for September 2020 rent. He maintained that the two-month rent penalty was not indicated in the parties' written tenancy agreement and that the landlords cannot seek it simply because it's a company "policy." He confirmed that the landlords conveniently took two months to re-rent the unit, in order to seek a two-month rent loss.

The tenants seek the return of their deposits totalling \$2,875.00 plus the \$100.00 application filing fee. The tenant said that because the landlords went after the tenants for September 2020 rent of \$2,875.00, they revoke their written permission for the landlords to keep their deposits. He stated that he thought the tenants would get back their deposits, once the landlords found new tenants to re-rent the unit and they expected them to do it in good faith. He explained that he spoke to a lawyer, who told him that he was entitled to get his deposits back. He maintained that the landlords had all of June and July 2020 to find new tenants for the unit, since the tenants provided notice in May 2020 to the landlords that they were moving out. He confirmed that since

the landlords took too long to re-rent the unit and did not do so in good faith, the tenants were entitled to the return of their deposits.

The landlords dispute the tenants' application to obtain a return of their deposits. The landlord claimed that the tenants already agreed in writing for the landlords to keep their deposits.

Analysis

Landlords' Application

Subsection 45(2) of the Act sets out how tenants 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 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 landlords.

In this case, the tenants ended the tenancy on July 31, 2020, prior to the end of the fixed term on January 31, 2021. I find that the tenants breached the fixed term tenancy agreement. As such, the landlords may be entitled to compensation for losses they incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the Act.

Section 7(1) of the Act establishes that tenants who do not comply with the Act, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the Act places a responsibility on landlords 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 landlords' application for September 2020 rent loss of \$2,875.00 without leave to reapply. The landlords already obtained a \$500.00 lease break fee and retained the tenants' deposits of \$2,875.00 towards August 2020 rent loss. I find that one month of August 2020, is a reasonable period of time to clean the rental unit, answer rental inquiries, show the unit and re-rent to new tenants. I find that two months is an unreasonable period of time.

The landlords are entitled to apply for rent loss, under section 67 of the *Act*, regardless of whether it was included in the written tenancy agreement, contrary to the tenants' assertions. However, despite the landlords' company policy to seek two months of rent loss, I find that the landlords failed to provide sufficient evidence that they are entitled to September 2020 rent loss.

As the landlords were unsuccessful in their application, their claim to recover the \$100.00 filing fee is dismissed without leave to reapply.

Tenants' Application

Section 38 of the *Act* requires the landlords to either return the tenants' deposits or file for dispute resolution for authorization to retain the deposits, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposits. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities and the evidence and testimony of both parties. The tenancy ended on July 31, 2020. The tenants provided a written forwarding address to the landlords on July 27, 2020, by way of email. The landlords retained the tenants' deposits, pursuant to written permission provided by the tenants on July 28, 2020.

The tenants later regretted allowing the landlords to keep their deposits, are upset that the landlords sought September 2020 rent from them and believe that the landlords did not attempt to re-rent the unit in good faith. I find that the tenants are not entitled to revoke their written permission for the landlords to keep their deposits. I find that the

tenants provided this written permission to the landlords to cover a cleaning fee and August 2020 rent loss, since they breached the fixed term tenancy agreement and vacated earlier than January 31, 2021. They may have regretted their decision after the fact, but they made the decision, nonetheless.

The landlords continue to hold the tenants' deposits of \$2,875.00. Over the period of this tenancy, no interest is payable on the deposits. I order the landlords to retain the tenants' entire security and pet damage deposits totalling \$2,875.00, as I find that the tenants gave the landlords written permission to do so for cleaning and August 2020 rent loss.

Accordingly, I find that the tenants are not entitled to a return of their deposits totalling \$2,875.00 and this application is dismissed without leave to reapply.

As the tenants were unsuccessful in their application, their claim to recover the \$100.00 filing fee is dismissed without leave to reapply.

Conclusion

I order the landlords to retain the tenants' entire security and pet damage deposits, totalling \$2,875.00.

Both parties' entire applications are dismissed 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: December 15, 2020

Residential Tenancy Branch