



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S

Introduction

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

- a monetary order for unpaid rent in the amount of \$650 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants attended the hearing. The landlord did not attend the hearing but was represented by an agent ("**CS**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

CS testified, and the tenants confirmed, that the landlord served the tenants with the notice of dispute resolution form and supporting evidence package. I find that the tenants have been served with the required documents in accordance with the Act.

The tenants did not submit any documentary evidence in response to the landlord's application.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$650;
- 2) recover the filing fee;
- 3) retain the security deposit in satisfaction of the monetary orders made?

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 June 1, 2020 and ending June 30, 2021. Monthly rent was \$1,382.50 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$650, which the landlord retains in trust for the tenants.

CS testified that, on August 24, 2020, the tenants gave notice that they would be ending the tenancy as of August 31, 2020.

CS testified that she was able to secure a new tenant for the rental unit to move in on September 15, 2020. The new tenant pays \$1,800 per month in rent and paid \$900 in pro-rated rent for the second half of September, 2020.

CS argued that the tenant breached the tenancy agreement by terminating their tenancy before the end of the fixed-term, and by failing to give 30 days' notice. She stated the landlord is entitled to receive the rent she would have earned from the tenants while the rental unit was vacant (September 1 to 15, 2020).

The tenants agreed that they gave notice to end the tenancy on August 24, 2020 and moved out on August 31, 2020. Tenant AT testified that they did this because they learned that the unit above was being sprayed for bedbugs on August 24, 2020. AT testified that the exterminator advised her that bedbugs could potentially migrate from the upper unit to the lower unit.

AT testified that she has seen one of the occupants of the upper unit without a shirt on, covered in bedbugs bites, and that she did not want to experience that. She testified that she did not want to have to replace all of the furniture in the rental unit due to a bedbug infestation.

AT testified that, on August 24, 2020, she asked CS to have the rental unit sprayed for bedbugs as well, but that CS refused. As such, the tenant decided to move out of the rental unit as soon as possible.

CS stated that spraying for bedbugs is expensive, and there was no evidence that the bedbugs were in the rental unit (the tenants agreed that this was the case). She testified that the landlord wanted to see if the spraying of the upper unit was effective to eliminate the bedbugs in the residential property, before incurring another costly expense of spraying the lower unit.

CS testified that in the months since the upper unit was sprayed and the tenants left the rental unit she has not received any reports of bedbugs from the occupants of the upper unit or from the new occupant of the rental unit.

CS also argued that she was entitled to more time between learning of the tenants request that the rental unit sprayed for bedbugs and the tenant giving notice that they would be leaving the rental unit.

Analysis

Section 45(2) and (3) 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.

The earliest date the tenants could give notice to end the tenancy under section 45(2) is May 31, 2021. As such, by giving notice on August 24, 2020, they breached section 45(2).

A tenant may end a fixed term lease prior to the end of their term, but only the conditions of section 45(3) are met, namely:

- 1) the landlord has breached a material term of the tenancy agreement;
- 2) the tenant give written notice of the breach; and
- 3) the landlord has not correct the breach within a reasonable time after receiving the tenants' written notice.

The tenant argued that they should be allowed to have end the tenancy because CS denied their request to have the rental unit sprayed for bed bugs. I do not find that such a denial amounts to a breach of a material term of the tenancy agreement. There is no evidence before me that the rental unit had any bedbugs in it, or that the spraying of the rental unit was even necessary to prevent bedbugs from migrating from the upper unit to the lower unit.

To the contrary, based on CS's testimony that there have been no reported bedbug issues from either of the units, it would seem that the spraying of the upper unit adequately addressed the infestation.

Additionally, I note that the tenants did not provide written notice to the landlord that they considered CS's denial of spraying the rental unit to be a material breach, nor did they allow the landlord a reasonable amount of time to correct such the alleged breach. They simply told CS they were leaving since she decided not to have the rental unit sprayed on August 24, 2020.

As such, I find that the tenants have not met the conditions set out at section 45(3) of the Act.

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:

- 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 tenants have breached the tenancy agreement by ending the tenancy prior to the end of its term (June 30, 2021). I find that the landlord has suffered a financial loss as a result of this breach, by way of loss of rental income.

However, I disagree with the landlord's calculation as to the amount of loss suffered.

Under the tenancy agreement between the parties, the landlord would have earned \$1,382.50 for September 2020. CS testified that the landlord was able to re-rent the rental unit at an increased monthly rent to a new tenant of \$1,800 and earned \$900.00 in rent from the rental unit for September 15 to 30, 2020. As such, the landlord lost \$482.50 (\$1,382.50 - \$900.00) as the result of the tenants' breach.

I find that by securing a new tenant as quickly as CS did, that the landlord has successfully minimized the landlord's damage or loss.

Accordingly, I order that the tenants pay the landlord \$482.50 in compensation for the loss caused by their breach of the tenancy agreement. The landlord has been successful in this application and may therefore recover the filing fee from the tenants.

The landlord may retain the \$582.50 of the security deposit in satisfaction of the monetary order made.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the landlord may retain \$582.50 of the security deposit representing the recovery of the filing fee and of compensation for the loss incurred as the result of the tenants breaching the tenancy agreement.

The landlord must return the balance of the security deposit to the tenants in accordance with the Act.

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 21, 2020

Residential Tenancy Branch