



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Shackleton Trading Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCL-S, 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 unpaid rent, damages and loss pursuant to section 67;
- Authorization to retain the deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fees from the tenants pursuant to section 72.

The agent of the corporate landlord (the "landlord") and one of the named respondent tenants, NE (the "tenant") attended the hearing. The tenant confirmed that they only represented themselves and were not authorized to represent the other named respondent. The parties were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties each confirmed that they were served with the respective materials and based on their testimonies I find them duly served in accordance with sections 88 and 89 of the *Act*.

The landlord testified that they served the respondent BE with the notice of application and evidence by registered mail on October 1, 2020. The landlord provided a valid Canada Post tracking number as evidence of service on the respondent BE. Based on the evidence I find that the respondent BE is deemed served with the landlord's materials on October 6 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 tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This fixed term tenancy began on March 1, 2020 and was scheduled to end on February 28, 2021. Both named respondents are listed as co-tenants on the tenancy agreement. Monthly rent was \$2,000.00 payable on the first of each month. A security deposit of \$1,000.00 and pet damage deposit of \$1,000.00 were paid at the start of the tenancy and still held by the landlord. The tenancy agreement contains a liquidated damage clause allowing for a payment of \$850, the pre-estimate of the amount required to re-rent the suite, should the tenants end the tenancy before its full term. The parties say there was a move-in condition inspection report prepared though none was submitted into documentary evidence.

On July 1, 2020 the tenant sent an email to the landlord stating that they:

...wish to terminate our lease [at the dispute address] early due to unforeseen circumstances. Unfortunately, due to COVID-19 our wages have been garnished leaving us in a vulnerable place financially. What was within our budget before the pandemic is no longer within our means, resulting in our decision to leave [the dispute address] effective July 31st 2020.

The parties testified that after the tenant's correspondence was received by the landlord, they discussed finding a new occupant of the rental unit to assign or sublease the tenancy. The landlord submits that they believed that the correspondence of July 1, 2020 was merely the tenant exploring the possibility of ending the fixed-term earlier than its term and not a valid Notice pursuant to the *Act*. The parties agree that the landlord took some steps during this time to show the rental unit to potential occupants. The landlord said that as they believed that the tenant had not given valid notice they did not take all the steps they otherwise would.

The tenant issued correspondence to the landlord dated July 25, 2020 informing the landlord that they have removed most of their possessions from the rental unit.

The tenant submitted to the landlord a statement pursuant to section 45.2 of the *Act* that the tenant is eligible to end a fixed-term tenancy earlier than its full term under section 45.1 [*tenant's notice: family violence or long-term care*] dated August 6, 2020.

By a letter dated August 11, 2020 the landlord confirmed receipt of the statement and correspondence from the tenant. The landlord writes in their correspondence:

To end the tenancy, please provide us with your formal notice to end tenancy. If we receive this notice to end tenancy before the end of August, the tenancy will end September 30, 2020. To date, we still have not received this. The e-mail we received on July 1, 2020 and subsequent correspondence was to assign or sublet your unit and as such, we were operating under this agreement.

The tenant subsequently wrote in an email to the landlord dated September 3, 2020:

On July 1, 2020 I provided notice in writing. Since it was not a clear thirty days, I agree to the deduction of \$850 in liquidated damages from my damage deposit return.

The parties submit that the tenant provided a forwarding address on or about September 11, 2020 and the landlord filed their application on September 25, 2020.

The landlord now seeks a monetary award in the amount of \$8,020.45 for the following items:

Item	Amount
Unpaid Rent August-September 2020	\$4,000.00
Loss of Rental Income October 2020	\$2,000.00
Liquidated Damages	\$850.00
Unpaid Utilities Aug 2020	\$15.00
Furniture Removal	\$240.45
Cleaning	\$300.00
Patching & Painting Walls	\$250.00
Rekeying Rental Unit	\$365.00
Total	\$8,020.45

The landlord submits that the tenants never provided a valid Notice to End Tenancy that was accepted and therefore they are responsible for rent for the months of August and September. The landlord testified that they did not interpret any of the earlier correspondence from the tenants to be a valid notice and believed the tenants were in possession of the suit. The parties say that neither contacted the other to arrange for a move-out inspection to be performed. The landlord says they discovered the rental unit abandoned sometime in September and due to the condition of the suite they were unable to rent it for October 2020, incurring rental income losses.

The landlord submits that the rental unit was left in a state of disarray and that they incurred costs for cleaning, maintenance and disposal of furniture left in the suite. The landlord submitted receipts and invoices for the amounts claimed. The tenant disputes that the rental unit required cleaning and work to the extent the landlord claims. The tenant acknowledges that some furniture was left in the suite but says that it was the responsibility of the other named respondent to remove those items and they should not be held liable for the cost of its removal.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

In the case before me I accept the evidence of the parties that the tenant provided their forwarding address to the landlord on or about September 11, 2020 and the landlord filed their application for authorization to retain the deposits on September 25, 2020. As such, I find the landlord was within the statutory timelines to file their application.

I accept the evidence of the parties that the tenant has provided written authorization that the landlord may retain \$850.00 from the deposits for this tenancy representing the liquidated damage fee payable under the tenancy agreement. Accordingly, I find that the landlord is authorized to make a deduction of \$850.00 from the deposits.

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.

In accordance with section 45(2) of the *Act* a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy 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.

Section 53 of the *Act* provides that if the effective date stated in a notice is earlier than the earliest date permitted that the effective date is deemed to be the earliest date that complies.

If the correspondence of July 1, 2020 is deemed to be a proper notice, pursuant to section 53 of the *Act* the effective date is automatically deemed to be February 28, 2021, no earlier than the date specified in the tenancy agreement. It is evident that the correspondence of July 1, 2020 makes no mention or reference that the tenancy is being ended under section 45.1 [*tenant's notice: family violence or long-term care*].

As stated in section 52(d.1) of the *Act*, a notice under 45.1 [*tenant's notice: family violence or long-term care*] must be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*]. The tenant did not provide a written confirmation of eligibility until August 6, 2020. If, as the tenant submits, the confirmation of eligibility of August 6, 2020 and correspondence of July 1, 2020 are to be read together as a singular notice to end a fixed term tenancy then I find that the notice was not received in full until August 6, 2020. As such, pursuant to section 45.1(3) I find that the effective date of the notice would be on a date no earlier than one month after the date the landlord receives all parts of the notice on the day before the date when rent is payable under the tenancy agreement, September 30, 2020.

I find that the tenants remained responsible for paying monthly rent for this tenancy in the amount of \$2,000.00 for the months of August and September 2020 pursuant to the tenancy agreement. As such, I find that the landlord is entitled to a monetary award in the amount of \$4,000.00 for the rental arrear for the tenancy. I also find that the tenant was responsible for utilities for the suite until the end of the tenancy and is therefore liable for the utility charge of \$15.00 for the month of August 2020.

I am not satisfied that the condition of the rental unit was such that the landlord was unable to rent the unit out for October and that their rental income loss is attributable to a breach on the part of the tenants. As noted above, I find that the tenant provided valid written notice to end the fixed-term tenancy as of September 30, 2020. The tenant cannot be held responsible for rental income losses that arise after the effective date of their notice in the absence of a further breach on their part. I find insufficient evidence that the condition of the rental unit was in such disarray that it would constitute a breach on the part of the tenants giving rise to a monetary award in the landlord's favour. I find that the landlord has not met their evidentiary burden on a balance of probabilities to establish that the rental income loss is a result of any breach on the part of the tenants and consequently dismiss this portion of the application.

I find that in the absence of a proper condition inspection report prepared by the parties in documentary evidence I am not satisfied that the damages the landlord attributes to the tenants are a result of the tenancy. The parties testified that a condition inspection report was prepared at the start of the tenancy, but none was submitted into evidence. The landlord submitted some invoices and receipts for cleaning, painting and work done to the rental unit but I am not satisfied, based on the limited evidence, that these costs incurred were reasonable or a direct result of the tenants' breach. As such, I dismiss this portion of the landlord's application seeking a monetary award for cleaning and patching & painting walls.

The tenant confirms that furniture was left in the rental unit and not all keys were returned to the landlord. While the tenant submits that it was the responsibility of the other named respondent to remove the furniture, as the parties are both named tenants on the tenancy agreement they are joint and severally liable for monetary claims arising from the tenancy. I accept the submission of the landlord that they incurred costs for disposing of furniture and rekeying the building due to the tenants failing to return all keys and remove all items from the rental unit. I accept the evidence of the landlord that the cost of furniture removal and rekeying is \$605.45 and issue a monetary award in that amount accordingly.

As I find the landlord's application was meritorious, I allow the landlord to recover their filing fee from the tenants.

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

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$3,570.45 on the following terms:

Item	Amount
Unpaid Rent August-September 2020	\$4,000.00
Liquidated Damages	\$850.00
Unpaid Utilities Aug 2020	\$15.00
Furniture Removal	\$240.45
Rekeying Rental Unit	\$365.00
Filing Fees	\$100.00
Less Security Deposit	-\$1,000.00
Less Pet Damage Deposit	-\$1,000.00
TOTAL	\$3,570.45

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.

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: January 15, 2021

Residential Tenancy Branch