



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act (the “Act”) for a monetary order for loss or other money owed, permission to retain the security deposit, and for the return of their filing fee. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing. The Landlord and the Tenant were affirmed to be truthful in their testimony. Both parties were 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 oral and written evidence 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

- Is the Landlord entitled to monetary compensation for damages under the *Act*?
- Is the Landlord entitled to retain the security deposit?
- Is the Landlord entitled to the return for their filing fee for this application?

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.

Both parties agreed that they signed a tenancy agreement on July 22, 2020, listing the rent in the amount of \$1,525.00 per month and that the Tenant had paid a security deposit of \$765.00 at the time of signing this tenancy agreement. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that on August 13, 2020, the tenant verbally advised them that they would not be moving into the rental unit as they were unhappy with the condition of the unit.

Both the Landlord and the Tenant agreed that the Tenant never moved in to the rental unit, and that the Tenant served the Landlord with written notice to end their tenancy, effective immediately, on August 17, 2020.

The Landlord testified that this tenancy was to start as of August 16, 2020 but acknowledged that they failed to include a start date for this tenancy on their written tenancy agreement. The Landlord testified that upon receiving the Tenant's written notice, they immediately started looking for a new renter for the rental unit.

The Landlord testified that they secured a new renter for the rental unit as of September 3, 2020. The Landlord is requesting a half month's rent, in the amount of \$765.00, to recover the lost rental income between August 16, 2020, to September 3, 2020, caused by the short notice to end tenancy from the Tenant.

Analysis

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

The Landlord has claimed compensation for the recovery for their lost rental income between August 16, 2020, to September 3, 2020, due to the Tenant's breach of the tenancy agreement. Section 7 of the Act provides for an award for compensation for damages or loss as a result of a landlord or tenant not complying with the Act, the regulations or their tenancy agreement.

The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides the following guidance:

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

In order to be awarded compensation, an applicant must first prove that there has been a breach of the *Act* by the Respondent. 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 or, in a month to month tenancy, without giving at least one clear rental period notice.

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.

After reviewing the tenancy agreement submitted into documentary evidence by the Landlord, I find that these parties entered into a month-to-month tenancy agreement signed on July 22, 2020, with no specified start date. Although there was no specific start date listed on this tenancy agreement, I do accept that on a balance of probabilities that this tenancy was set to beginning sometime in August 2020. I also accept the agreed-upon testimony of these parties that the Tenant issued written Notice to immediately end their tenancy to the Landlord on August 17, 2020. Therefore, I find that

the Tenant breached section 45 of the *Act* when they failed to provide one clear rental period notice to end this tenancy to the Landlord.

However, in the absence of a recorded start of tenancy date on this tenancy agreement, I find the specific terms of this tenancy agreement to be ambiguous and that this ambiguity had left some question as to when this tenancy was legally set to commence.

Without a clear representation of that start date for this tenancy, I find that I am unable to accurately calculate the lost rental income that the Landlord is claiming for in these proceedings and that I must turn to the legal rule of *Contra Proferentem* to resolve this matter.

Contra Proferentem is a rule used in the legal system when interpreting contracts, which basically means that any ambiguous clause contained in a contract will be interpreted against the party responsible for drafting the clause. Therefore, I find that pursuant to the rule of *contra proferentem*, the ambiguity in this term must be resolved against the Landlord who drafted this tenancy agreement.

I find that in the absence of a recorded tenancy stated start date on this tenancy agreement, that the Landlord has failed to prove the value of the loss they suffered. As the Landlord has not proven the value of the loss they suffered, I must dismiss the Landlord's claim for the recovery of their lost rental income between August 16, 2020, and September 3, 2020.

However, as it had been determined that the Tenant did breach the *Act* by not providing the required notice to end their tenancy, I find that the Landlord is entitled to a nominal award of \$200.00.

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 Landlord has been partially successful in their application, I find that they are entitled to the recovery of their \$100.00 filing fee for this application.

I grant the Landlord permission to retain \$300.00 of the security deposit they are holding for this tenancy, in full satisfaction of the amounts awarded above.

I order the Landlord to return the remaining \$465.00 of the security deposit that they are holding for this tenancy to the Tenant within 15 days of the date of this decision.

If the Landlord fails to return the remaining security deposit to the Tenant as ordered, the Tenant may file for a hearing with this office to recover their security deposit for this tenancy.

The Tenant is also granted leave to apply for the doubling provision pursuant to Section 38(6b) of the Act if an application to recover their security deposit is required.

Conclusion

I grant the Landlord permission to retain \$300.00 of the security deposit they are holding for this tenancy.

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I order the Landlord to return the remaining \$465.00 of the security deposit they are holding to the Tenant within 15 days of the date of this decision.

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 20, 2021

Residential Tenancy Branch