Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

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

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the tenants were served with the landlords' application for dispute resolution in October of 2020. I find that the tenants were served in accordance with section 89 of the *Act.*

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on September 1, 2020 and ended on September 30, 2020. This was originally a fixed term tenancy set to end on August 31, 2021. Monthly rent in the amount of $2,590.00 was payable on the first day of each month. A security deposit of $1,295.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord applied for dispute resolution on October 6, 2020.

The agent testified that the tenants ended the fixed term tenancy early and that the landlord suffered a loss of rental income for the month of October 2020 in the amount of $2,590.00.

The tenants testified that they ended the fixed term tenancy early because the landlord breached a material term of the tenancy agreement and failed to repair the breach in a reasonable period of time.

The tenants testified that they corresponded with agents of the landlord regarding the following issues with the subject rental property for their entire tenancy, but the landlords did not make the required repairs:

- Broken sliding glass door lock;
- Noise levels;
- Form K not delivered to strata; and
- Electrical lighting in the common areas.

The agent testified that an agent of the landlord responded within one to two days to all of the tenants' emails and worked towards a resolution. The agent testified that she spoke with one of the tenants on the phone on or around September 8, 2020 and told them that she wanted the tenants to be happy and that if they wanted to end their tenancy early they could but they would be responsible for any loss of rental income. The agent testified that she told the tenants that they could look for new tenants if they wanted to end the tenancy early.

Both parties agree that on September 21, 2020 the tenants emailed an agent of the landlord a letter dated September 21, 2020. The agent testified that an agent of the landlord received the September 21, 2020 letter on or around September 21, 2020.

The September 21, 2020 letter was entered into evidence and states:

> This letter serves as a written request for the following repair(s):
>
> Submit Form K
> Repair balcony lock and bedroom 1 door lock
> Fix electrical issues with lighting in common areas
>
> Section 32(1) of the *Residential Tenancy Act* states:
>
> (1) A landlord must provide and maintain residential property in a state of decoration and repair that
>
> (a) complies with the health, safety and housing standards required by law, and
>
> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
>
> We are hopeful that we can resolve the above issue by 10am Tuesday, September 22nd, 2020 for Completion of Repairs as we have emailed multiple times regarding these issues as well as addressed them over the phone. If not, we have the right to apply for dispute resolution through the Residential Tenancy Branch (RTB) to ask for a repair order and monetary compensation.

Both parties agree that on September 22, 2020 the tenants emailed an agent of the landlord a letter dated September 22, 2020. The agent testified that an agent of the landlord received the September 22, 2020 letter on or around September 22, 2020.

The September 22, 2020 letter was entered into evidence and states:

> This letter serves as an updated written notice to end our tenancy at the address listed above. The last day of our tenancy will be September 30th, 2020 and we will vacate the apartment by 1pm.
>
> The reasons for breaking this fixed term lease are as follows:
>
> 1. Section 32 (1) of the Residential Tenancy Act (TRA) has been violated
> 2. Section 33 of the TRA has been violated
>
> Please note that we can end our tenancy without penalty as a material terms of tenancy has been breached i.e. you have failed to repair the broken balcony door lock which leads directly into the apartment and is a safety and security concern. This is an emergency repair which was indicated on the inspection report that was initially sent to you on September 5th. Additionally, we sent a repairs and maintenance ("breach") letter on Monday September 21st 12:37am with a set deadline of Tuesday September 22nd 10am requesting the repair immediately. This deadline was not met and we are now ending our tenancy agreement.

The September 22, 2020 letter also provided the tenants' forwarding address.

The agent testified that prior to the September 22, 2020 written notice to end tenancy, the agent believed the tenants wished to end their tenancy early and so the agent began marketing the subject rental property, at the same rental rate, on September 16, 2020. The agent testified that the showings for the subject rental property began on September 18, 2020. The tenants agreed that the landlord started advertising and showing the subject rental property on or around this date.

Both parties agree that the tenants also advertised and showed the subject rental property to prospective tenants.

The agent testified that a new tenant was found for a tenancy effective November 1, 2020 at the same rental rate as the tenants.

The agent testified that after the tenants provided their official written notice to end tenancy, the landlord hired a property manager to find new tenants. The agent testified that at the time of filing this application for dispute resolution, the landlord believed the property management fee would be $1,500.00 and claimed $1,500.00 less the security deposit of $1,295.00 for a total of $205.00. The agent testified that the management fee

turned out to only be $1,295.00 and so the landlord is only seeking to retain the security deposit for this cost.

The tenants testified that the invoice entered into evidence for the management fee states that the address of the property manager is the same as the address for the landlord. The invoice confirms the above testimony. The tenants testified that they never dealt with the property manager listed in the invoice. The invoice is dated November 13, 2020.

The agent testified that the property manager listed was not able to complete the move out condition inspection report with the tenants because her partner had COVID 19 and so a different property manager, attended and completed the move out condition inspection report with the tenants, as a favour to the invoiced property manager. The agent did not provide any testimony as to why the address of the landlord and property manager are the same or why the invoice is dated approximately two weeks after the new tenants moved in.

Analysis

Section 45(3) of the *Act* states:

> 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.

Residential Tenancy Policy Guideline #8 states in part:

> To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:
> • that there is a problem;
> • that they believe the problem is a breach of a material term of the tenancy agreement;
> • that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
> • that if the problem is not fixed by the deadline, the party will end the tenancy.

I find that the September 21, 2020 letter, referred to as the “breach letter” by the tenants, did not state:

- that they believe the problems are a breach of a material term of the tenancy agreement; and
- that if the problems are not fixed by the deadline, the party will end the tenancy.

The September 21, 2020 letter stated that if the repairs were not made, the tenants might apply for a repair order from the Residential Tenancy Branch, not that they would end the tenancy. As the September 21, 2020 letter was deficient, I find that the tenants were not permitted to end this tenancy prior to the end of the fixed term.

Under section 7 of the *Act* a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss or incur excessive costs in the process of mitigation.

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have

been saved.

Policy Guideline 3 states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Based on the testimony of both parties I find that the landlord actively marketed the subject rental property for rent before the tenants gave written notice of their intention to end the tenancy early. I find that the above actions constituted appropriate mitigation of losses suffered by the landlord.

I accept the agent's testimony that the landlord was not able to re-rent the subject rental property until November 1, 2020. I find that the landlord suffered a loss of rental income in the amount of $2,590.00 as a direct result of the tenant's breach of section 44 of the *Act.* I find that the tenants are responsible for this loss.

The agent did not provide any testimony as to why the landlord and the property manager have the same address or why the invoice is dated after new tenants already moved in. I find that the agent failed to prove, on a balance of probabilities, that the invoice for the property manager is legitimate. I therefore dismiss this claim without leave to reapply.

As the landlord was successful in the claim for loss of rental income, I find that the landlord is entitled to recover the $100.00 filing fee from the tenants.

Section 38(1) of the *Act* states that within 15 days after the later of:

> (a)the date the tenancy ends, and
>
> (b)the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> (c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(1)(a) and 38(1)(b) of the *Act.*

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenants' security deposit in the amount of $1,295.00.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	**Amount**
Loss of rental income	$2,590.00
Filing fee	$100.00
Less security deposit	-$1,295.00
TOTAL	**$1,395.00**

The landlord is 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.

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 26, 2021

Residential Tenancy Branch