



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution on October 20, 2020 seeking an order to recover monetary loss of unpaid rent, and other monetary loss. Additionally, they applied for the cost of the hearing filing fee.

The matter proceeded by way of a hearing on February 16, 2021 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “*Act*”). In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the hearing. The tenant did not attend and did not provide documentary evidence prior to this hearing.

In the hearing, the landlord confirmed they delivered notice of this hearing and their prepared evidence to the tenant on October 29, 2020. They stated the tracking number entry for Canada Post showed the registered mail was delivered to each tenant and provided a copy of this in their evidence. Their package included their prepared documentary evidence in this matter.

In consideration of the evidence presented by the landlord, and with consideration to section 89 of the *Act*, I find the tenant was sufficiently served with notice of this hearing, as well as the landlord’s evidence.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid rent, and/or other money owed, pursuant to s. 67 of the *Act*?

Is the landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The landlord and tenant signed the agreement on June 8, 2020 for the start of the tenancy on July 1, 2020. The tenancy was for a fixed term to end on June 30, 2021. The monthly rent was \$7,400 payable on the first of each month. The paid security and pet damage deposits, each in the amount of \$3,700.

The tenant initiated the end of tenancy and did not occupy the rental unit since the start of the agreement. The landlord obtained the keys for the rental unit and took possession on October 8, 2020.

The landlord's monetary claim is as follows:

- a. October rent = \$7,400

The landlord presented that the tenant did not give a final date for the end of the tenancy. They had stated they would pay for October, their friends in the unit would bring the keys to the landlord on October 5. This turned out to be October 8 when the landlord completed an inspection with the friend. The landlord did not hear from or have any communication with the tenant after this time.

The landlord stated the tenant paid rent amounts for July, August and September. By September 28, the tenants advised they were no longer continuing with the tenancy. When the landlord advised it is a fixed term tenancy, the tenants just said: 'we're not going to pay'. An email of this date shows the tenant claiming shock that there was a "stranger in the property we rented." Additionally, they presented they had a "Self-Isolation Plan" in effect for when they re-entered Canada – this does not include the possibility of others being on the same property. The tenant stated: "So, we think about our lease arrangement never into effect. PLEASE return the rent fee and security fee at all."

In the hearing the landlord explained that the "stranger" that the tenant questioned was another tenant who lives in the adjacent unit.

On October 8, 2020, the tenant's friend walked through the rental unit with the landlord and completed a move-out inspection report. That individual signed the completed document on the tenant's behalf.

b. liquidated damages = \$7,400

A 9-page Addendum forms part of the agreement; both parties signed this on June 8, 2020. It contains the following “Liquidated Damages” clause at #18:

If the Tenant terminates the tenancy before the expiry, a sum of equivalent to one (1) month rent will be charged by the Landlord and the Tenant will pay this amount as a service charge to tenancy changeover cost, such as advertising, interviewing, administration and re-renting, for this short term tenancy. This is not a penalty.

c. utility amounts owing - \$388.

The tenancy agreement page 2 contains the notation that sets out “70% of utilities paid by the tenant.” In the hearing, the landlord verified this includes internet/cable, hydro and gas

The landlord sent an email to the tenant on October 18 outline bill amounts owing, totalling \$338.06. They sent receipts to show these billed amounts.

- for electricity the landlord gave the amount \$56.39, 70% of the bill amount for August \$80.56 – bill provided;
- for gas, the landlord gave the amount \$22.72, 70% of the bill amount for combined bills coming to \$15.90 based on calculation over three months’
- for internet, the landlord gave the amount \$265.77, 70% of the bill amount for the combined bills coming to \$379.68 over three months including October.

This total \$338.06 differs from the landlord’s claimed amount of \$388. They accounted for this difference in the hearing, presenting a subsequent Hydro bill for \$150.26 in October. They stated this bill amount was to be split three ways; this adds \$50.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

For each portion of the landlord's claim, I award the following amounts:

- a. October rent amount awarded: \$7,400

The *Act* s. 45(2) specifies that a tenant may end a fixed term tenancy by giving the landlord notice on a date that is: not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified as the end of the tenancy; and is the day before the day in the month that rent is payable.

Here, the landlord's evidence is that the tenant gave notice – via email -- that is not in line with what the *Act* stipulates. This shows the tenant advised of their desire to discontinue the tenancy, advising the landlord of this on September 28, 2020. By October 8 the rental unit was vacant.

This is not proper notice as per the *Act*. The tenant was not entitled to give notice to end the tenancy for an effective date that was earlier than one month after the landlord received the notice. Therefore, the tenant is obligated to pay the landlord for the October 2020 full rent amount. I so award the landlord \$7,400 for this part of their claim.

- b. liquidated damages amount awarded: \$0

The Residential Tenancy Branch has a set of *Residential Tenancy Policy Guidelines*. These are in place to provide a statement of the policy intent of the *Act*. On Liquidated Damages, Policy Guideline 4 provides: "The amount [of damages payable] agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable."

I find a framework for the clause – as set out above – is not in place. The clause appears arbitrary and is not a genuine pre-estimate of loss. That is to say, the costs of each of advertising, interviewing, administration and re-renting are not established. I find it more likely than not these costs will not approach this rent amount of \$7,400.

In sum, I find the liquidated damages clause is invalid in that it is punitive in nature. In line with the four points set out above, I find the true value of a loss involving re-renting the unit is not

established, and this arbitrary one-month amount is not an effort at mitigating the monetary loss.

For these reasons, I make no award for this portion of the landlord's claim.

c. utilities owing, amount awarded: \$338.06

This is the amount shown in the receipts provided and based on the message the landlord's sent to the tenant on October 18. The landlord did not accurately add the following October electricity bill for \$150.26; the 70% calculation is not clear in the evidence.

Because the landlord was successful in their claim, I award them the reimbursement of the Application filing fee.

Conclusion

Pursuant to section 67 and 72 of the *Act*, I grant the landlord a Monetary Order for \$7,838.06. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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 s. 9.1(1) of the *Act*.

Dated: February 17, 2021

Residential Tenancy Branch