



Dispute Resolution Services

Page: 1

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 for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act") made on October 21, 2020. The Landlord applied for a monetary order for unpaid rent or utilities, for a monetary order for damages, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord and one of the Tenants attended the hearing and were each 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.

Preliminary Matter – *Landlord Testimony*

Throughout these proceedings, the Landlord was unprepared to present their documentary evidence, and repeatedly changed details of their claim. When asked to testify to specific dates for their claim and to present their evidence, the Landlord repeatedly offered inconsistent testimony, that directly contradicted their own supporting documentary evidence and written submissions.

This Arbitrator provided the Landlord with additional time during this proceeding to search through paperwork and confirm information. However, the Landlord remained unable to clearly testify to dates and details of their claim.

Preliminary Matter – Adjournment Request

At minute 21 of these proceedings the Landlord stated that they were not feeling well and requested to adjourn to these proceedings to a later date.

The Tenant objected to the adjournment of these proceedings and a further delay of a decision regarding their deposit.

As these parties could not agree on the requested adjournment and as the Landlord waited until 21 minutes into these proceedings before they requested an adjournment, I find that it would be procedurally unfair to the Tenants to grant the Landlord's request.

Issues to be Decided

- Is the Landlord entitled to monetary order for unpaid rent and utilities?
- Is the Landlord entitled to monetary order for damage?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

The Landlord testified that they had met the Tenants on September 30, 2020, to show them the rental unit, that the Tenants had agreed to rent the unit that day and had paid the Landlord a \$1,300.00 security deposit. The Landlord testified that the monthly rent in the amount of \$2,600.00 had been agreed to, and that the tenancy was set to begin on November 1, 2020. The Landlord then changed their testimony three times, regarding the start date for this tenancy, finally testifying that the tenancy was set to begin on October 18, 2020. The Landlord testified that no tenancy agreement was signed between these parties.

The Landlord testified that on or about October 7, 2020, the Tenants gave them Notice that they would not be taking the rental unit. The Landlord testified that it took them until

December 15, 2020, to secure a new renter for the rental unit, and that they are requesting the recovery of their lost rental income for two months, between October 18, 2020 to December 14, 2020.

The Tenant testified that they had never reached a formal agreement with the Landlord for this tenancy but agreed that they had paid a deposit of \$1,300.00 on September 30, 2020. The Tenant argued that the Landlord accepted the deposit under false pretenses, as they had clearly told the Landlord they wanted a two-year tenancy, that they may agree to a one-year if they had the option to renew, but that the Landlord had known that they could not give them the requested term due to the restriction of a reverse mortgage they had on the property.

The Tenant testified that they were still negotiating with the Landlord regarding the term of the tenancy, when it became clear to them that they could not get the fixed term tenancy they were looking for, so they decided, on October 9, 2020, to give the Landlord Notice that they would not be taking the rental unit.

When asked, the Tenant testified that they were seeking a new property to rent as they had to be out of their previous rental unit no later than October 31, 2020.

The Landlord testified that they knew the Tenants wanted a longer term for the tenancy, then the six-month term permitted by the reverse mortgage they had on their property. The Landlord testified that they had taken steps to remortgage the property so they could provide the longer term that the Tenants were asking for, and that they had been approved for that new mortgage on October 15, 2020.

The Landlord testified that they are also seeking two months' worth of online advertising cost for the rental unit, in the amount of \$52.00, consisting of \$26.00 for a one-month ad starting October 30, 2020 and \$26.00 for the second one-month ad starting November 30, 2020.

The Tenant testified that the Landlord never stop advertising the rental unit as available after they paid their deposit on September 30, 2020, arguing that this proves that there was no tenancy agreement.

The Landlord testified that there was a tenancy agreement, and that they stop advertising the rental unit a few days after the Tenants paid their deposit, on about October 2, 2020 and then started a new advertisement on October 30, 2020, after the Tenants had refused to take the rental unit.

The Landlord testified that the Tenants had agreed to pay the cost of the home appraisal for the new mortgage they applied for, in the amount of \$400.00. The Landlord is requesting the recovery of the home appraisal cost that the Tenant agreed to pay.

The Tenant testified that they made the offer to cover the cost of the home appraisal as a settlement offer, with the understanding, if accepted the Landlord would return the remainder of the deposit they paid. However, the Landlord did not except this offer, did not return the deposit and therefore, they are not required to pay the cost of the home appraisal.

The Landlord testified that they did not and do not except the Tenant's offer to settle this case.

Analysis

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

I find that these parties entered into a month-to-month verbal tenancy, when the Tenants paid, and the Landlord excepted the \$1,300.00 security deposit on September 30, 2020. However, the start date for this tenancy is unclear and clearly in dispute between these parties.

Due to these inconstancies in the Landlord's testimony, I am unable to accept their version of events regarding the agreed to start date of this tenancy. However, I will accept it, on a balance of probabilities, that this tenancy would have started on November 1, 2020, based on the testimony of the Tenant that they had to vacate their pervious rental no later than October 31, 2020.

Additionally, I also accept the Tenant's testimony that they had provided their Notice to end this tenancy to the Landlord on October 9, 2020. 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.

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.

As I have previously determined that this tenancy would have started on November 1, 2020, and that the Landlord had received Notice to end the tenancy from the Tenant on October 9, 2020, I find that this tenancy could not have ended in accordance with the *Act* until November 30, 2020. I find that the Tenants failed to comply with the *Act* when they issued short notice to the Landlord to end this tenancy.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“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. 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 this case, I find that the Tenants' breach of section 45 of the *Act* resulted in a loss of rental income to the Landlord for the month of November 2020, and that the Landlord has provided sufficient evidence to prove the value of that loss.

However, the verbal testimony of the Landlord was that they stopped advertising the rental unit on October 2, 2020 and did not start a new advertisement unit October 30, 2020, a full 22 days after they received the Tenants' notice to end the tenancy. Therefore, I find that the action of this Landlord, to have waited 22 days a start looking for a new renter, to have been an unreasonable and inappropriate action to minimize their possible damages or losses due to the Tenants' breach.

Accordingly, I find that the Landlord was in breach of section 7(2) of the *Act* when they did not take immediate steps to rent the rental unit after being notified that the Tenants had decided to end the tenancy. Therefore, I dismiss the Landlord's claim for the recovery of the loss of rental income.

As for the Landlord's claim for the recovery of advertising costs in the amount of \$52.00, I have reviewed the totality of the Landlord documentary evidence to these proceedings, and I note that the Landlord did not submitted receipts for the purchase of online advertising to these proceeding. In the absence of these receipts, I find that the Landlord has not proven the value of this loss, and I dismiss this portion of the Landlord's claim.

Finally, the Landlord has also claimed for the recovery of \$400.00 for a house appraisal; however, I accept the agreed upon testimony of these parties that the Tenants' offered to cover this cost was made as a settlement offer for this case that the Landlord has refused that offer. As the Landlord refused this settlement offer and there is no requirement under the *Act* for a tenant to cover this type of cost, I dismiss this portion of the Landlord's claim.

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 not been successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for their application.

Overall, I dismiss the Landlord's claims in their entirety.

I order the Landlord to return the security deposit that they are holding, in the amount of \$1,300.00, for this tenancy to the Tenants within 15 days of receiving this decision.

Conclusion

The Landlord's application is dismissed, without leave to reapply.

I order the Landlord to return the Tenants' security deposits to the Tenants within 15 days of receiving this decision.

In order to enforce this decision, I grant the Tenants a **Monetary Order** under section 38 of the Act, in the amount of **\$1,300.00**. The Tenants are provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord 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: February 19, 2021

Residential Tenancy Branch